

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

KARLA ONDRUS as the Guardian and Conservator
for ANDY ONDRUS, a protected Person, on behalf of
himself and all others similarly situated,

Plaintiff,

vs

Case No. 08-004408-NF
Hon: Peter J. Maceroni

CITIZENS INSURANCE COMPANY,

Defendant.

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PLAINTIFF'S SUPPLEMENTAL BRIEF IN SUPPORT OF
MOTION FOR CLASS CERTIFICATION
BASED ON DEPOSITION OF AMY LUNA

On May 18, 2009, this Court held a hearing on Plaintiff's Motion to Compel and Plaintiff's Motion for Class Certification. During the argument on the motion to compel, the Court suggested that Plaintiff take the deposition of Amy Luna. The Order entered by the Court required Defendant to produce Amy Luna for deposition. As it turns out, this Court's suggestion was a good one. Ms. Luna supports the basis for Class Certification.

On June 1, 2009, Plaintiff began the deposition of Amy Luna. Ms. Luna's deposition will be continued.

Ms. Luna oversees all PIP adjusters in the state of Michigan. Ms. Luna's deposition contains significant admissions regarding the class certification motion pending before the Court. Plaintiff submits the transcript of the first day of Ms. Luna's deposition for the Court's consideration regarding class certification. A copy of the transcript, with exhibits, is attached as **Exhibit A**.

The following are some brief highlights of significant testimony provided by Ms. Luna, although this list is not exhaustive.

1. Citizens adopted a flat rate for payment of medical mileage. **Exhibit A**, at 48, 50.
2. Citizens would pay the flat rate for medical mileage to those individuals for whom the foundational requirements of an injury arising out of the use of a motor vehicle and mileage incurred for reasonably necessary services. **Exhibit A**, at 48, 50.
3. Citizens adopted the IRS medical and moving rate as the standard rate for payment of medical mileage to its insureds. **Exhibit A**, at 53.
4. Citizens sent its standard form letter, entitled "Medical Mileage Information," (bates no. 05950), to all its insureds.¹ **Exhibit A**, at 67.
5. Citizens intended that its insured rely on the standard form letter. **Exhibit A**, at 56, 79-81.
6. Standard form letter 05950 can be misleading, by suggesting that there is a No-Fault Act guideline that requires payment of .20 or .27 cents per mile, when no such guideline exists. **Exhibit A**, at 76-77, 81-82.
7. Ms. Luna is going to recommend that the language of the letter be changed. **Exhibit A**, at 77.
8. Citizens is following the same policy today as that adopted in January 2007 with respect to payment of medical mileage. **Exhibit A**, at 51.

¹The standard form letter 05950 is attached as Exhibit B to Plaintiff's Motion for Class Certification.

9. Standard form letter 05950 can be misleading, because it nowhere indicates that an insured may be entitled to more than the .20 or .27 cents per mile or how to obtain additional amounts, but states that is all that the insured is going to get. **Exhibit A**, at 89, 91.
10. Citizens has another standard form letter (bates no. 05953)² that does not go out to all insureds, but only goes out if an insured complains about the standard rate that Citizens is paying. **Exhibit A**, at 67-68.
11. The form letter that does not go out to all insureds (05953) includes the following sentence that is **not** contained in the letter that does go to all insureds: "If you have additional information to support a greater cost associated with your medical mileage, please submit proofs for further consideration."³
12. The exclusion of the quoted sentence from the form letter to all insureds (05950) is ambiguous and misleading. **Exhibit A**, at 89-90.

Virtually every policy holder or individual covered under the policy who submitted for mileage reimbursement was affected by this policy of intentional mileage underpayment and deception/misrepresentation.

These are some of more salient points from the first day of Ms. Luna's deposition. Review of the entire deposition is appropriate. What is clear is that Citizens adopted the lower medical and moving rate and communicated that rate to all insureds across the board as the rate to which they

²This document is Exhibit 3 to the deposition of Amy Luna and was produced to Plaintiff for the first time at the deposition.

³Thus, contrary to the position taken by Citizens in opposing class certification, Citizens did not inform all insureds that they were entitled to seek a higher amount. If there were any insureds who received the second letter, those insureds would be part of a sub-class or excluded from the class to the extent they received a rate commensurate with the IRS business rate.

were entitled. Citizens held back information and only provided it if an individual complained. Even then, the information was not accurate.

Ms. Luna's deposition confirms that class certification on the breach of contract issue is proper, as the only issue is what is a reasonable rate per mile for medical mileage (all the other prerequisites under the No Fault Act having been met). Ms. Luna's deposition further confirms that class certification on the fraud claim is appropriate as Citizens communicated the same, misleading message to all its insureds.

CONCLUSION

For all the reasons set forth in the initial motion and brief, the reply brief, and those set forth above, this Court should certify a class of Citizens' insureds who have incurred medical mileage and received reimbursement at unreasonable, lowball rates during the six years prior to the filing of the Complaint and who have been defrauded.

Respectfully submitted,

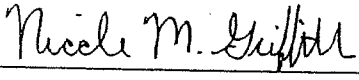
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Dated: June 8, 2009

PROOF OF SERVICE

The undersigned hereby certifies that on June 8, 2009, a copy of the foregoing Plaintiff's Supplemental Brief in Support of Motion for Class Certification Based on Deposition of Amy Luna was served via United States Postal Service, first class mail, postage prepaid, addressed to Lori McAllister, 201 Townsend Street, Suite 900, Lansing, MI 48933, and to Robert S. Huth, Jr., 19500 Hall Road, Suite 100, Clinton Township, MI 48038.



Nicole M. Griffith

Transcript of the Testimony of
AMY LUNA

Date: June 1, 2009

Case: ONDRUS VS. CITIZENS

 *Grant & Associates*

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

KARLA ONDRUS as the Guardian and Conservator
for ANDY ONDRUS, a protected Person, on behalf of
himself and all others similarly situated,

Plaintiff,

vs.

CASE NO.: 08-004408-NF

HON. PETER J. MACERONI

CITIZENS INSURANCE COMPANY,

Defendant.

DEPOSITION OF AMY LUNA

Taken by the Plaintiff on Monday, the 1st day
of June, 2009, at the Macomb County Bar Association,
40 North Main Street, Suite 435, Mount Clemens,
Michigan, at 10:00 a.m.

APPEARANCES:

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* * * *

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AMY LUNA

Page 3

I N D E X

WITNESS:

AMY LUNA

Examination by MR. McKENNA

PAGE:

5

* * * *

E X H I B I T S

DEPOSITION EXHIBIT NO. 1-A (Notice of Taking Deposition; attached)	34
DEPOSITION EXHIBIT NO. 1-B (Cross-Notice of Taking Deposition; attached)	34
DEPOSITION EXHIBIT NO. 2 (E-Mail from Luna to Borin; attached)	63
DEPOSITION EXHIBIT NO. 3 (Correspondence Regarding Medical Mileage; attached)	63
DEPOSITION EXHIBIT NO. 4 (E-Mail Correspondence from Rogers to Malone - Part I; attached)	64
DEPOSITION EXHIBIT NO. 5 (E-Mail Correspondence from Rogers to Malone - Part II; attached)	64

* * * *

1 MOUNT CLEMENS, MICHIGAN

2 MONDAY JUNE 1, 2009

3 2:30 P.M.

4
5 * * * *

6
7 VIDEO TECHNICIAN: We are now on the
8 record.

9 This is the video tape deposition of Amy
10 Luna being taken on Monday, June 1st, 2009. The time is
11 now 2:30:22 p.m. We are located at 40 North Main
12 Street, Mount Clemens, Michigan.

13 We are here in the matter of Karla
14 Ondrus, et al, versus Citizens Insurance Company. This
15 is case number 08-004408-NF. This matter is being held
16 in the Circuit Court for the County of Macomb.

17 My name is Travis Jewell, video
18 technician.

19 Would the Court Reporter swear in the
20 witness and the attorneys briefly identify themselves
21 for the record, please?

22 A M Y L U N A ,
23 After having been first duly sworn to tell the truth,
24 the whole truth and nothing but the truth, testified as
25 follows:

1 MR. MCKENNA: James McKenna on behalf of
2 the plaintiff.

3 MS. McALLISTER: Lori McAllister on
4 behalf of Defendant.

5 MR. MCKENNA: Could you state your name
6 for the record, please?

7 THE WITNESS: Amy Luna.

8 MR. MCKENNA: Let the record reflect this
9 is the date and time scheduled for the deposition of Amy
10 Luna taken pursuant to Notice and to be used for any and
11 all purposes allowed under the Michigan Court Rules.
12

13 * * * *

14 EXAMINATION

15 BY MR. MCKENNA:

16 Q Do you want to be called Ms. Luna, Amy? Which way would
17 you like to be addressed?

18 A Amy is fine.

19 Q Amy, I'm going to ask you some questions. If at any
20 time I ask you a question you don't understand, will you
21 let me know?

22 A Yes.

23 Q If I ask you a question and you indicate that you don't
24 remember or you're not sure but later on you do, will
25

1 you let me know so you can change your answer on the
2 record?

3 A Yes.

4 Q Likewise, if I ask you a question and you indicate that
5 you have an answer and realize later on for whatever
6 reason that answer is not accurate, will you let me know
7 and you can change that answer as well?

8 A Yes.

9 Q The Court Reporter sitting across from us is going to
10 transcribe every one of my questions. I order for her
11 to do that, you'll have to give a verbal response to the
12 question. I won't tell you you have to say yes or no,
13 but something verbal as opposed to nodding your head or
14 shrugging your shoulders, okay?

15 A Okay.

16 Q Through the course of the deposition, please don't
17 change my question in your mind and give a different
18 answer. If you're really not sure about what it is I
19 asked, let me know as opposed to you trying to think
20 what I'm asking. Is that fair?

21 A Okay, that's fair.

22 Q When this transcript is prepared, my questions will be
23 first, your answer will follow. Myself or anyone else,
24 the judge, jury, reading the transcript, will assume
25 that when you answered a question you did so only.

1 because you understood the question and that your
2 answers were accurate and truthful; is that fair?

3 A That's fair.

4 Q Have you ever given a deposition before?

5 A Yes.

6 Q How many times?

7 A Twice.

8 Q When was the last time?

9 A It had to -- I don't recall the exact date. It was a
10 few years ago with a different company.

11 Q What kind of a case was that?

12 A It was a PIP case.

13 Q With which company?

14 A Progressive Insurance.

15 Q And the other deposition?

16 A Was also with Progressive Insurance, and that was a PIP
17 case as well.

18 Q Do you know who the attorneys were for Progressive on
19 those cases?

20 A No, I don't recall.

21 Q You're currently employed with Citizens; is that
22 correct?

23 A The company is Hanover Insurance.

24 Q Forgive me. If you don't mind, because I'm going to
25 keep screwing that up, if I say Citizens can we agree

1 that I'm referring to Hanover?

2 A Yes.

3 Q I'll try and say Hanover, but if I slip I don't want to
4 have to go through the colloquy again, all right?

5 A Okay.

6 MS. McALLISTER: If we could just clarify
7 one thing, her employer is the Hanover Insurance Group,
8 the policy here was written by Citizens Insurance
9 Company of America, so if you say Citizens that's going
10 to be the entity who paid on the claim that is at issue
11 in this case.

12 MR. McKENNA: Could we have an agreement
13 that if I just say Citizens we all know what we're
14 talking about then?

15 MS. McALLISTER: That would be just fine.

16 MR. McKENNA: Great.

17 BY MR. McKENNA:

18 Q I think my question was you're employed with Citizens,
19 now the Hanover Insurance Group. How long have you been
20 employed with them?

21 A Since November, 2006.

22 Q What were you hired in as?

23 A PIP unit manager.

24 Q What is your current position?

25 A Is PIP manager.

1 Q Between PIP unit manager and PIP manager, are there any
2 other positions you've held?

3 A No.

4 Q What were your job duties and responsibilities when you
5 were hired in as a PIP unit manager?

6 A I had approximately eight PIP adjusters and one
7 administrative staff that reported to me. My duties
8 were to train, develop our adjusters, and have some
9 oversight over their file handling.

10 Q Who did you report to?

11 A Yvonne Rogers.

12 Q She no longer works for the company?

13 A That's correct.

14 Q And what was her title?

15 A It was PIP manager.

16 Q The position you now have?

17 A Yes.

18 Q And prior to working for Citizens you worked for
19 Progressive?

20 A That's correct.

21 Q Prior to Progressive did you work for any other
22 insurance company?

23 A Yes.

24 Q Which company?

25 A Allstate Insurance.

1 Q And prior to that where did you work?

2 A It would have been Spectrum Community Health.

3 Q Did that have anything to do with insurance?

4 A No.

5 Q Other than Progressive and Allstate have you worked for
6 any other insurance companies in the past?

7 A No.

8 Q Are you a high school graduate?

9 A Yes.

10 Q What high school?

11 A Saranac High School.

12 Q Spell it for me.

13 A S-A-R-A-N-A-C.

14 Q Is that in New York?

15 A No, that's in Michigan.

16 Q Michigan?

17 A Yes.

18 Q And what year did you graduate?

19 A 1986.

20 Q Did you go to college?

21 A Yes.

22 Q Where?

23 A Davenport University.

24 Q Where was that?

25 A Grand Rapids, Michigan.

1 Q And did you obtain a degree?

2 A Yes, I did.

3 Q In what year?

4 A 2002.

5 Q And what was the degree in?

6 A It was a bachelor's of applied science with a business
7 management emphasis.

8 Q Was it a two-year?

9 A Four-year.

10 Q Four-year. And after Davenport in 2002 what was your
11 first job?

12 A That would have been with Progressive Insurance.

13 Q Okay. And what year did you start with them?

14 A It was in June of 2002.

15 Q What was the position you were hired in as?

16 A As a PIP adjuster.

17 Q Is it a fair statement that you had no prior experience
18 in PIP prior to that?

19 A That would have been Allstate prior to Progressive.

20 Q Forgive me. I'm making assumptions I shouldn't be.

21 How long did you work for Progressive?

22 A Until November of 2006.

23 Q You started with Allstate in what year?

24 A 1998.

25 Q And when did you last work with them?

1 A 2000.

2 Q And what was the reason that you left Allstate?

3 A I secured a position with a company that was much closer
4 to my home at the time, it was not in insurance.

5 Q What was the name of that company?

6 A Atwood Corporation.

7 Q What did you do there?

8 A I was a human resource specialist.

9 Q How long did you work for Atwood?

10 A I worked until June of 2002.

11 Q And that's when you started with Progressive?

12 A Yes.

13 Q When you were with Allstate what was your position?

14 A I started out as a medical claim specialist.

15 Q Handling auto?

16 A It was PIP.

17 Q Prior to working in that position, would it be a fair
18 statement that you did not have any experience handling
19 PIP claims?

20 A That's correct.

21 Q What type of training did you receive from Allstate in
22 handling PIP claims?

23 A It was all on-the-job training. I was paired with our
24 senior adjusters as well as mentoring through my direct
25 supervisor.

1 Q And how long were you receiving that on-the-job training
2 and mentoring before you were handling files of your
3 own?

4 A I would say approximately close to a year.

5 Q And then about a year after that you left the company;
6 is that fair?

7 A A year after that, yes. Been there two years.

8 Q So you were handling PIP claims on your own for about a
9 year?

10 A Yes.

11 Q Would it be a fair statement that in order to handle PIP
12 claims you needed to understand the Allstate policy,
13 No-Fault policy?

14 A I would say the policy as well as the Michigan No-Fault
15 Statute.

16 Q I only get to ask one question at a time, but that was
17 my follow-up. So in order for you to do your job you'd
18 have to have a working knowledge of both?

19 A That's correct.

20 Q And in order for you to do your job you would have to
21 read and understand and know what the policy and the
22 statute said as it related to benefits that insureds
23 were entitled to?

24 A That's correct.

25 Q And would it be a fair statement that you had to have

1 that same knowledge when you worked with Progressive?

2 A That would be correct.

3 Q And the same knowledge when you work now with Citizens?

4 A Yes.

5 Q Now, is it your testimony that since November of 2006
6 that you feel that you are knowledgeable of the Michigan
7 No-Fault Statute as well as the Citizens' policy as it
8 applies to Citizens' insureds?

9 A Yes, I would feel I'm knowledgeable.

10 Q And have you attended any seminars --

11 A Yes.

12 Q -- with respect to PIP with Citizens?

13 A Yes.

14 Q And have you attended any seminars with Allstate?

15 A No.

16 Q Prior to working with Citizens did you know who
17 Mr. Jim Borin was?

18 A Yes.

19 Q Prior to working with Citizens did you meet Mr. Borin?

20 A Yes.

21 Q Prior to working for Citizens did you read Mr. Borin's
22 book?

23 A Yes.

24 Q Did you ever attend any meetings with Mr. Borin prior to
25 working with Citizens?

1 A I attended a class, yes.

2 Q Okay. And what class did you attend with Mr. Borin?

3 A The Michigan No-Fault.

4 Q And how long was that class?

5 A I want to say it was either six or eight weeks. I don't
6 recall exactly.

7 Q Do you know what year that was?

8 A It would have been around the time I started at
9 Progressive, so about 2002.

10 Q Would it be a fair statement, ma'am, that as it relates
11 to adjusting PIP claims there are essentially three
12 things that a PIP adjuster does. They make a decision
13 to pay benefits, is one of them?

14 A Yes, that's one.

15 Q They make a decision to deny benefits, which is another
16 one?

17 A Yes.

18 Q Or they make a decision that they need to have more
19 information to make the decision to pay or not pay?

20 A That would be correct.

21 Q Would you agree that an adjuster handling PIP files does
22 one of those three things on a daily basis?

23 A Yes.

24 Q And that for the most part what an adjuster does on
25 their job handling PIP files involves an activity that

1 would fall into one of those three categories?

2 A Yes.

3 Q With respect to the PIP benefits that insureds are
4 entitled to, is it your testimony as a PIP manager that
5 your adjusters are supposed to know all of the benefits
6 that the insureds are entitled to?

7 A Yes.

8 Q Would you agree that if an adjuster doesn't know all of
9 the benefits that an insured is entitled to that that
10 would be an adjuster that needed additional training or
11 education?

12 A Yes.

13 Q Would you agree that an insured has a reasonable
14 expectation of having an adjuster that knows what
15 they're doing?

16 MS. McALLISTER: I'll object to that. It
17 requires speculation as to what an insured may or may
18 not expect. It's speculation.

19 BY MR. McKENNA:

20 Q Go ahead.

21 A I would say yes, they would expect that they would have
22 knowledge.

23 Q You as a PIP manager should have a reasonable
24 expectation that your insureds have adjusters that know
25 what they're doing?

1 A Yes.

2 Q With respect to the insureds' claims, at Citizens you
3 have a diary system, is that correct, that you use?

4 A That's correct.

5 Q Do you have a name for it? I'll call it a diary system,
6 if that works, or do you have a special name at Citizens
7 that you refer to it as?

8 A A diary system is fine.

9 Q And that diary system since you've been at Citizens is
10 electronic?

11 A Yes.

12 Q Is there a way to enter into that system and change any
13 of the entries without anyone knowing about it?

14 MS. McALLISTER: What level person?

15 MR. McKENNA: Any level person.

16 BY MR. McKENNA:

17 Q Is there a way to access the database on files with the
18 electronically diaried information without there being a
19 footprint, fingerprint, some type of notice that it was
20 changed, deleted, removed?

21 A Without a footprint, no.

22 Q So to the extent that there is information logged into
23 the diary system by an adjuster or by someone at
24 Citizens with authority, it should leave behind
25 information as to at least whose computer code or pass

1 code was used?

2 A Yes.

3 Q Understanding that someone else could have had someone's
4 pass code and left the information, would it be a fair
5 statement that a pass code is needed to log-in to the
6 computer system?

7 A Yes, that's correct.

8 Q Since you have been with Progressive and Allstate, were
9 you able to determine that at both of those positions it
10 was also diary systems that were used?

11 A Yes, they were diary systems.

12 Q When you got to Citizens did you learn from your
13 experience there that the way that they diaried files
14 was different than what was being done at Allstate or
15 Progressive?

16 A No, they were very similar.

17 Q With respect to the way files are diaried then, would
18 you agree that a diary system has at least two purposes,
19 and I'll mention them one at a time, that when you go in
20 and log information into a file you do that as it
21 relates to significant daily activities on that file?

22 A Yes.

23 Q Would you agree that a significant daily activity would
24 include one of the three items we discussed earlier;
25 decision to pay, to not pay, or to obtain additional

1 information?

2 A Yes, those would be reasons.

3 Q And one of those three reasons, if they occurred on a
4 daily basis, would be a significant daily activity that
5 should, in fact, be logged?

6 A Yes.

7 Q Would you agree then that after a significant daily
8 activity has occurred that the documentation of it is to
9 be done in a clear and concise manner?

10 A Yes.

11 Q Would you agree that no one from outside of Citizens
12 would tell an adjuster how or what information to put in
13 the diary?

14 A That is correct.

15 Q With respect to the information that is put into the
16 diary, that would come from you as a PIP manager or --
17 I'm going to go back to my notes -- PIP unit manager,
18 you would want to make sure that all of the employees
19 that were working under you were following Citizens'
20 requirements for diarying?

21 A Yes.

22 Q Would you agree that in addition to being clear and
23 concise that the entry of information into a diary is so
24 that from a historical standpoint you would be able --
25 anyone reading the diary would be able to know what the

1 adjuster was doing?

2 A Yes.

3 Q And in an unambiguous way?

4 A Yes.

5 Q And that's because you want it entered first in a clear
6 and concise manner?

7 A That's correct.

8 Q If you as the unit PIP manager or PIP manager or
9 adjuster were making entries, one of the other reasons
10 for it would be so that if anyone wanted to know later
11 on, historically, what you were doing or what you were
12 thinking, that entry should take care of that?

13 A That's correct.

14 Q Would you consider it to be a reasonably -- strike that.
15 Would you consider as a unit PIP manager or PIP manager
16 that a reasonably prudent adjuster would do those
17 things?

18 A That would be correct.

19 Q Now, are you aware that under the No-Fault Act the
20 actions of the insurance company are to be reasonable
21 with respect to how they handle a claim?

22 A Yes.

23 MS. McALLISTER: Objection, misstates the
24 law.

25 ///

1 BY MR. McKENNA:

2 Q Go ahead.

3 MS. McALLISTER: Go ahead and answer.

4 THE WITNESS: Would you repeat the
5 question?

6 BY MR. McKENNA:

7 Q Would you agree that as a unit PIP manager, PIP manager,
8 or an adjuster that the actions of the adjusters
9 handling the file, or you as a PIP manager or unit
10 manager, are to be reasonable in the way that you deal
11 with that file to the insured?

12 A I would think that it's -- you need to be reasonable as
13 it pertains to the No-Fault law and our policy.

14 Q Well, are you aware that under the No-Fault Act as well
15 as the policy it states that you will, in fact, act
16 reasonable when you're presented with claims by the
17 insureds?

18 A I don't recall that section of the No-Fault law.

19 Q Are you familiar with what the word reasonable means as
20 it relates to the Citizens' policy and the No-Fault Act?

21 A Yes.

22 Q You said that you are in a position where you teach or
23 train people, correct?

24 A That's correct.

25 Q Do you teach and train them with respect to Citizens'

1 policies and procedures?

2 A Yes.

3 Q And you expect them to follow that training?

4 A Yes.

5 Q Do you train your adjusters and your unit PIP managers
6 that work below you that reasonable is fair?

7 A As it relates to the accident, yes.

8 Q As it relates to all of the claim?

9 A All of the claim, yes.

10 Q So in terms of what would be reasonable, you would tell
11 people that their responsibility in handling files is to
12 be fair?

13 A Yes, as it relates to the auto accident and the claim,
14 yes.

15 Q Now, have you ever handled any other types of claims
16 besides PIP files?

17 A No.

18 Q You're aware that once a PIP file is started until the
19 person dies or the claim is completed the insurance
20 company at the time will be the insurance company for
21 the rest of that person's life?

22 MS. McALLISTER: For a particular claim?

23 MR. McKENNA: For a particular claim.

24 THE WITNESS: For a particular claim,

25 yes.

1 BY MR. MCKENNA:

2 Q They may have additional claims for other -- I'm only
3 talking about one claim.

4 A Right. So if they have ongoing medical issues related
5 to the auto accident, yes, we would be responsible for
6 that.

7 Q And unlike say a bad marriage or bad relationships, you
8 don't get to change carriers?

9 A Correct.

10 Q With respect to the claims file process, in terms of the
11 word reasonable, are you aware that under the No-Fault

12 Act once reasonable documentation, reasonable proof has
13 been submitted that the insurance company has an
14 obligation within thirty days to make a decision to pay
15 or not pay on a certain benefit?

16 A Yes.

17 Q Would you agree that as an insurance company you train
18 your employees that they are to pay benefits that
19 insureds are entitled to in a reasonable manner?

20 A Yes.

21 Q Would you agree that you are to pay them what is a
22 reasonable amount for what they're claiming?

23 A Yes.

24 Q Now, with respect to what is reasonable, you will only
25 pay -- and for all PIP claims it would be the same --

1 you only pay what is reasonable?

2 A Right. What is reasonable and owed under the No-Fault
3 Statute, correct.

4 Q To the extent -- and let me go through this just as a
5 foundation. I want you to assume for all of the rest of
6 my questions when I deal with payment of a claim, I want
7 us to assume that under the No-Fault Act there was an
8 injury or a claim arising out of use, operation, or
9 maintenance of a motor vehicle as a motor vehicle, okay?

10 A Okay.

11 Q That's a foundational requirement, isn't it?

12 A Yes.

13 Q Then it has to be reasonable, necessary and related to
14 the automobile accident?

15 A Correct.

16 Q And then it would have to be for the care,
17 rehabilitation or recovery of the insured?

18 A Correct.

19 Q Now, I want you to assume that when I'm talking about
20 the payment of benefits that all of those foundational
21 requirements have been met, okay?

22 A Okay.

23 Q If I veer from that, I'll let you know.

24 A Okay.

25 Q But it will save me from having to restate the whole

1 thing, and hopefully this will go quicker that way.

2 A Okay.

3 Q So once there has been a determination that a benefit is
4 reasonable, necessary and related, the adjuster's job is
5 to pay that benefit, correct?

6 A Correct.

7 Q The adjuster's responsibility to the company is to pay
8 what is reasonable?

9 A Correct.

10 Q Does Citizens -- strike that.

11 Let's go back to -- Progressive, I think,
12 was your first job?

13 A Yes -- or, no, Allstate. Sorry.

14 Q Allstate. Was your training at Allstate and Progressive
15 the same as it relates to PIP payments being made in a
16 reasonable manner, a reasonable time, and for a
17 reasonable amount?

18 A Yes.

19 Q Would you agree that your responsibility, whether it is
20 from a provider, or an ambulance company, or for
21 transportation expenses, that you owe a reasonable --
22 you owe the reasonable amount for the service claims?

23 A Yes.

24 Q With respect to PIP you pay what's reasonable based on
25 the service provided as opposed to who's providing the

1 service?

2 A Yes.

3 Q So in other words, if it was a PIP attendant care claim
4 and a neurosurgeon was charging a neurosurgeon's rate to
5 do their work, and their spouse was injured and they
6 were providing attendant care and they submitted a bill
7 or claim for their time as a neurosurgeon, you would
8 tell them that you pay only what's reasonable for that
9 service?

10 A That's correct.

11 Q And I take it that would cut both ways; if your insured
12 was submitting a claim and you knew that it wasn't
13 reasonable to pay, say, a dollar an hour for attendant
14 care, you would tell them that's not reasonable, we owe
15 you more?

16 A Yes.

17 Q So with respect to when claims are made, whether it is
18 an insured making a claim for more than what is
19 reasonable or less than what is reasonable, in all of
20 the companies that you have worked for, and in
21 particular at Citizens, you pay what is reasonable
22 regardless of how it is claimed, correct?

23 A Yes.

24 Q With respect to your job at Citizens, is there a program
25 or a procedure that you have to follow-up and make sure

1 that your insureds are being treated reasonable or
2 reasonably or fairly by the adjusters?

3 A Our process is if there is an issue or a question of
4 reasonableness, then certainly our customers call in and
5 most of the time they'll talk to the unit manager first,
6 or sometimes that does get elevated to myself if they're
7 not happy with the discussion with the unit manager, and
8 that's how the process starts.

9 Q Now, would you as a unit manager or a PIP manager want
10 to have all of your insureds treated the same regardless
11 of who their adjuster was?

12 MS. McALLISTER: Object to foundation in
13 terms of what you mean by the "the same."

14 BY MR. McKENNA:

15 Q Would you want to have each of the insureds provided the
16 benefits they're entitled to in the same manner
17 regardless of who the adjuster was?

18 A I would say, yes.

19 Q So it wouldn't be fair to expect that an insured with
20 one adjuster gets paid more money or less than someone
21 else for the same service or same claim just because
22 they have a different adjuster?

23 A Well, the service itself could depend. It depends
24 specifically, because case by case their benefit may be
25 a little different based on their medical needs.

1 Q Let me remove any ambiguity.

2 A Okay.

3 Q For the purpose of my question, I want you to assume
4 it's identical.

5 A Okay.

6 Q It wouldn't be fair to expect that one insured got paid
7 a different rate for a claim or a service than someone
8 else simply because they had a different adjuster?

9 A Correct.

10 Q With respect to the handling of the files, for example
11 on the Ondrus file, have you reviewed the file?

12 A No, I have not.

13 Q Who is the adjuster that's assigned to handle that file?

14 A Stacey Fisher (phonetically).

15 Q And is Stacey Fisher (ph.) someone that you supervise?

16 A No.

17 Q Who supervises Stacey?

18 A Shelly Garcia.

19 Q And do you supervise her?

20 A Yes.

21 Q Would it be a fair statement then that the hierarchy of
22 things at Citizens, responsibility rolls up?

23 A Yes.

24 Q That if Ms. Fisher (ph.) is doing her job, she's
25 supervising Ms. Garcia?

1 A No, Ms. Garcia is supervising Ms. Fisher (ph.).

2 Q Forgive me. And then you would supervise Ms. Garcia?

3 A Correct.

4 Q And somewhere in that process, if either her supervisor
5 or the adjuster is not treating the insured in a
6 reasonably fair manner, you would be responsible for
7 that as the supervisor of those people?

8 A If I am notified there's an issue, then yes, that would
9 get my involvement.

10 Q How do you catch whether or not the people below you --
11 how do you honestly catch in that sense -- how do you
12 determine that they're doing their job appropriately?

13 A There's various ways. For my unit managers I may go in
14 and look at their documents such as feedback that they
15 give on a file, I may spot check that, certainly if
16 there's a concern. Sometimes the customers will call me
17 directly or ask to speak to me directly, so I would then
18 get involved in that file.

19 Q For a moment let's talk about the hierarchy. At
20 Citizens you have an adjuster as the first contact
21 person typically with an insured on a claim?

22 A Yes.

23 Q Above the adjuster, what is the title? PIP unit
24 manager?

25 A Yes, PIP unit manager.

1 Q And above the PIP unit manager, what is the next title
2 for supervision?

3 A PIP manager.

4 Q And that's your position now?

5 A Yes.

6 Q Above you what is the next person or title that you
7 report to?

8 A Vice president of claims -- well, vice president --
9 sorry, of PIP and Workers Comp.

10 Q And who is that person currently?

11 A Richard Cammett.

12 Q You're going to have to spell that last name.

13 A No problem. It's C-A-M-M-E-T-T.

14 Q Now, the vice president of PIP and Workers Comp., is
15 that a position only in Michigan?

16 A No, he actually is in our corporate office in Worcester,
17 Massachusetts.

18 Q How do you spell Worcester?

19 A W-O-R-C-E-S-T-E-R.

20 Q And do you know who is in a supervisory position above
21 Mr. Cammett?

22 A Yes. It's vice president of claims, and that is
23 Mark Welzenbach, that's W-E-L-Z-E-N-B-A-C-H.

24 Q And are you aware of a position above vice president of
25 claims as it relates to PIP in Michigan that would have

1 a supervisory position?

2 A Above Mark is, I believe, our vice president of our
3 company, her name is Marita, and I could not even
4 pronounce or spell her last name for you, so I
5 apologize. I'm not sure what her last name --

6 Q Do you even know how to say it?

7 A It's -- no. No, I would have to look. I apologize.

8 Q Her title is vice president of Hanover Insurance Group?

9 A Yes.

10 Q Now, with respect to policies and procedures that apply
11 to Michigan No-Fault insureds, can an adjuster dictate
12 policy for the company?

13 A No.

14 Q Can a unit manager of PIP dictate policy for the
15 company?

16 A No.

17 Q Can the PIP manager dictate policy for the company?

18 A No.

19 Q Can the vice president of PIP and Workers Comp. dictate
20 policy for the company?

21 A Could you specify policy, so I know I'm answering you
22 correctly? You don't mean the actual auto policy?

23 Q No, no, no.

24 A Okay.

25 Q I'm talking about claims handling policies or

1 procedures.

2 A Okay, then the vice president could, yes.

3 Q Since you have been with Citizens have you had policy
4 and procedure changes that have been dictated by the
5 vice president of PIP and Workers Comp.?

6 A Yes.

7 Q Was Richard Cammett the person that dictated those
8 changes to policy and procedure?

9 A He was one, yes, one person.

10 Q Okay. Who was the other one?

11 A Karen Malone.

12 Q Now, Karen Malone, was she also a vice president for PIP
13 and Workers Comp.?

14 A She's an assistant vice president for PIP.

15 Q I want to go back and make sure I haven't missed any of
16 the positions in the ladder.

17 A Uh-huh.

18 Q Adjuster, PIP unit manager, PIP manager, vice president
19 for PIP and Workers Comp. Above or below that position
20 or beside it, where does Karen Malone fit in?

21 A When I started the company she actually was over
22 Michigan. I don't report to her, but my predecessor
23 did, Yvonne Rogers.

24 Q Okay.

25 A So since then her current position is she is over PIP

1 over our eastern states, so she's not as involved in
2 Michigan. I don't report directly to her, but she
3 reports to Dick Cammett.

4 Q In this particular case, the medical transportation
5 claims --

6 A Yes.

7 Q -- there was a policy and procedure change that took
8 place. Was that something with respect to what amount
9 to pay for medical mileage and transportation?

10 A Uh-huh.

11 Q Was that a policy or procedure that was dictated by
12 Karen Malone or Richard Cammett, or Mark Welzenbach, and
13 Marita who you can't say her last name?

14 A The two I know, and I don't know everyone, I can say
15 that Karen Malone and Dick Cammett.

16 Q Karen --

17 A And Yvonne Rogers. I'm sorry. So Karen Malone, Dick
18 Cammett, and Yvonne Rogers, and I -- if they had others
19 involved, I wouldn't have knowledge of that.

20 Q Yvonne Rogers, I think we talked, was in the position
21 that you hold now?

22 A Yes.

23 Q Dick Cammett, at the time -- and I'm referring to the
24 time when there was a policy or procedure change as to
25 medical transportation expenses -- Dick Cammett was the

1 vice president for PIP and Workers Comp.?

2 A That's correct.

3 Q And Karen Malone at the time would have been in the vice
4 presidential position in charge of PIP in Michigan?

5 A Right, Michigan and -- actually all of PIP at that time.
6 So across all states, yes.

7 Q All right. But for sure she had Michigan?

8 A Yes.

9 Q As it relates to the payment for medical transportation,
10 you learned back with Allstate and Progressive before
11 you went to Citizens that you were to pay medical
12 transportation expenses that were reasonable, necessary,
13 and related to a claim for which the insured had
14 coverage?

15 A Yes.

16 (Whereupon Deposition Exhibit
17 Number 1-A was marked for identification
18 by the Court Reporter and attached
19 to the transcript.)

20
21 (Whereupon Deposition Exhibit
22 Number 1-B was marked for identification
23 by the Court Reporter and attached
24 to the transcript.)

25 ///

1 Q And -- why don't we do this: Why don't I show you the
2 first two exhibits. Exhibit 1-A is my Notice of Taking
3 Deposition, and 1-B is a amended notice or cross-notice.
4 Have you seen either of those before today?

5 A Yes, I saw the 1-A -- or actually I saw both. I think I
6 got copies of both of these.

7 MS. McALLISTER: I'm sorry, that was 1-A
8 and 1-B?

9 MR. McKENNA: Yes.

10 BY MR. McKENNA:

11 Q Have you brought all of the documents that were
12 requested in Exhibit 1-A with you today?

13 A No, I brought the ones that were in my possession. I
14 think other ones had been provided to our counsel.

15 Q All right. Well, let me go over this then.

16 A Okay.

17 Q The first one, the entire PIP file for Andy Ondrus, did
18 you bring that?

19 A Yes, I did.

20 Q All documents reflecting or related to the defendant's
21 decision to use or adopt the IRS medical and moving rate
22 as the rate that you will pay for medical mileage?

23 MS. McALLISTER: We have all of the
24 documents that we produced in the case in my car, but
25 they are the ones that we produced to you that were

1 Bates stamped. If you need one of those for some
2 reason, we certainly can go get them, but the majority
3 of them consist of the claims file that she brought.

4 MR. McKENNA: Okay.

5 BY MR. McKENNA:

6 Q So you have that with you available?

7 A I have it available, yes.

8 Q The reason I'm going over this is because I have been
9 getting almost -- I've been getting supplemental
10 responses to things, and even today we've marked another
11 exhibit of documents that we got just today, and what
12 I'm trying to do is find out if we have all of this
13 information.

14 A Okay.

15 Q I understand that you're saying we got what we have
16 already, Counsel has got it in her car, and we've
17 already received those. I want to make sure, because
18 you're the one under oath, that when you testify under
19 oath that this is all that there is we can accept that
20 or deal with the consequences later.

21 A Okay.

22 Q All right.

23 MS. McALLISTER: I have one caveat,
24 Counsel, and that is we discussed at the last hearing
25 that we would be undertaking a further electronic

1 search. Mr. Dombrowski (sic) indicated you would be
2 providing me with search terms that you wanted us to use
3 for that purpose. I advised you at that time that that
4 could not be completed by today, and you indicated you
5 wanted to proceed nonetheless.

6 MR. McKENNA: It's Zebrowski, and yes, I
7 remember.

8 MS. McALLISTER: My apologies.

9 BY MR. McKENNA:

10 Q But you understand what I'm getting at?

11 A Yes.

12 Q I want to know to the extent that you're here to swear
13 under oath that you have brought all of the documents
14 that you as the PIP manager are aware of as it relates
15 to this notice.

16 A Okay.

17 Q All right. All identifying documents, number four,
18 reflecting all of the individuals involved in the
19 decision making process. Those have already been
20 provided, apparently?

21 A I don't have knowledge of these documents, so I can't
22 speak to that one.

23 MS. McALLISTER: She can testify as to
24 what was in her files.

25 THE WITNESS: What was in my files.

1 BY MR. MCKENNA:

2 Q Well, let me ask you this: So it's your testimony that
3 whatever was in your files has been produced?

4 A That's correct.

5 Q As it relates to documents reflecting individuals
6 involved in the decision making or approval process for
7 adopting the IRS medical and moving rate?

8 A There were none of those in my files, so --

9 Q So I've got everything that you don't have? I don't
10 have anything in there, right?

11 A I don't have anything in there, yes.

12 Q All documents supporting or demonstrating the IRS
13 business standard mileage rate as being reasonable. You
14 had none of those either in your files?

15 A No -- well, I had one which was just a legal opinion
16 that commented on this, but that was all I had in my
17 file.

18 Q And that was the letter from Mr. Borin?

19 A Correct.

20 Q And you would have then had a letter to Mr. Borin?

21 A I believe -- I didn't recall whether I had requested by
22 phone or e-mail, but since, that's what we brought
23 today, he was able to find an e-mail of which I asked
24 him to provide the legal opinion.

25 Q So you had Mr. Borin's e-mail address available to you?

1 A Yes.

2 Q And you sent an e-mail to him regarding a claim, or
3 regarding a policy or procedure?

4 A No. I was asked to get a legal opinion on a policy or
5 procedure.

6 Q Okay. And someone would have asked you to do that?

7 A That's correct.

8 Q And who asked you to do that?

9 A Yvonne Rogers.

10 Q And do you have the e-mail or the request from her to
11 you to do that?

12 A No, she asked me verbally.

13 Q We talked earlier about activities that are of a
14 significant nature regarding claims files.

15 A Uh-huh.

16 Q Wouldn't that have been a significant activity to have
17 documented somehow or another?

18 A No, because it wasn't specific to a claim file. They
19 just wanted a general opinion overall to discuss medical
20 transportation and the mileage rate.

21 Q Does the documentation of your daily activities occur on
22 a diary basis?

23 A No, because I don't handle claims or have oversight on
24 the claims.

25 Q I'm not saying you are, I'm asking from the standpoint

1 of documenting what you have done, or what the company
2 has done with respect to policy and procedure when you
3 pass e-mails to or from someone, whether it's generated
4 internally or it's going outside, you don't maintain
5 those documents?

6 A I don't maintain every document, no.

7 Q What documents do you maintain then, if you don't
8 maintain every document?

9 A It would depend. A simple e-mail asking a question, I
10 certainly wouldn't -- I didn't keep in this regard so --
11 because we got the -- and for Mr. Borin, I didn't keep
12 that e-mail it was just actually asking him to do the
13 legal opinion, and then we got the hardcopy of the legal
14 opinion, which I did keep that.

15 Q Okay.

16 A So it's not necessary for me to keep everything.

17 Q Would you agree that with respect to payment of claims
18 that you have to pay at the time, or make a decision to
19 pay or deny at the time the claim is made or within
20 thirty days in order for the activity to be reasonable?

21 A Yes.

22 Q And you would have to, as you understand the Michigan
23 No-Fault Act and the policy, you would have to have as a
24 basis to pay or not pay reasonable proof to support that
25 decision?

1 A Yes.

2 Q And getting proof after the fact wouldn't be reasonable?

3 MS. McALLISTER: Object to the form of
4 the question.

5 THE WITNESS: Yeah, I would say --

6 BY MR. McKENNA:

7 Q For example, to say to someone, they submit a claim to
8 you for -- and I guess I'll say for any claim. We've
9 already established whatever claims are submitted for
10 any reason as a PIP claim have to be paid in a timely
11 manner and a reasonable manner, correct?

12 A Correct.

13 Q And under the No-Fault Act you have thirty days from
14 when the claim is presented to you to pay or you would
15 owe penalty interest?

16 A Correct.

17 Q So once you have made a decision to pay at whatever rate
18 or not pay, you would have to have under the No-Fault
19 Act and within the policy a reasonable basis for that
20 decision?

21 A Yes.

22 Q It wouldn't be reasonable to obtain a basis after a
23 denial or after a decision affecting the payment to
24 support the decision?

25 MS. McALLISTER: Object to the form of

1 the question.

2 BY MR. McKENNA:

3 Q Is that correct?

4 A It would depend because it could be something that we

5 denied but then additional documentation is then

6 received again, so we could then reconsider.

7 Q Let me make it easier for you. Let's assume that it's a

8 decision to pay.

9 A Okay.

10 Q And you're going to pay at a set rate, whether it's for

11 attendant care, or mileage, or parking reimbursement.

12 A Uh-huh.

13 Q If you make a decision to pay, you would have to have a

14 reasonable basis for that decision to pay?

15 A Yes.

16 Q It would not be reasonable to obtain a basis for that

17 decision at the rate that you paid to obtain information

18 later to support your decision?

19 A Well, there could be if a concern is raised. If the

20 customer calls in as not happy with what we're paying or

21 needs clarification on what we're paying we could.

22 Q I want you -- I'm sorry, I didn't mean to interrupt you.

23 A Oh -- no.

24 Q I want you to assume that that didn't occur.

25 A Okay.

1 Q That what you did was to tell the insured, this is what
2 we're going to pay you, and you made that decision, and
3 then after the fact you obtained information to support
4 that decision. Would that be reasonable?

5 A Yes.

6 Q So a payment of less money or denial of payment, you
7 believe it would be reasonable to obtain reasonable
8 support for the decision after the decision?

9 A There could be instances that we could.

10 Q Can you think of an instance where if you're following
11 the No-Fault Act and you're acting in a reasonable
12 manner that obtaining information after the fact would
13 be reasonable?

14 A An example, and excuse me if I'm not understanding, but
15 from what I'm hearing an example could be, again, if
16 something's medically changed, or we reviewed the claim
17 and we see that maybe what we weren't paying was
18 reasonable based on that medical need, or if something's
19 changed within that claim then we could go back and
20 revisit that, but we would need to have a basis for
21 doing that.

22 Q I want you to assume for the purpose of my question I'm
23 going to be dealing with medical transportation claims.

24 A Okay.

25 Q And if I change from that I'll let you know, but for the

1 next line of questioning I want you to assume that.

2 A Okay.

3 Q A decision -- strike that.

4 A claim gets submitted for a medical
5 transportation expense and a decision is made by the
6 adjuster that an expense for medical transportation is
7 reasonable, is necessary, and is related, and there's
8 coverage for it. The only decision after that is how
9 much to pay; is that correct?

10 A Correct.

11 Q Now, there was a change that was made in that policy at
12 Citizens, correct?

13 A Correct.

14 Q And when was that change made?

15 A January 1st, 2007.

16 Q And when was it that you sought a legal opinion on the
17 legality of that change?

18 A I believe the e-mail was dated in April of '07.

19 Q Would you consider it to be reasonable to obtain a legal
20 opinion for a decision that had already been made as
21 opposed to making an inquiry for a legal opinion before
22 changing the policy and procedure?

23 A Again, I'm not sure why it was asked after. I could
24 assume maybe there was a concern that had been raised
25 and they may have requested this after it.

1 Q But purely from an adjusting standpoint would you agree
2 that if you were going to base a decision to pay a
3 certain rate you would need to have the legal basis for
4 that before you made the decision?

5 A I would think that would be a factor to consider, yes.

6 Q Well, wouldn't you think that would be a legal factor
7 from the standpoint of being an adjuster? I'm not
8 asking you as an attorney, but as an adjuster you have
9 to review the No-Fault policy and the No-Fault Statute
10 and pay not just what's reasonable but reasonable within
11 the legal framework of those two documents?

12 A Correct.

13 Q You understand as a PIP adjuster, PIP manager and PIP
14 unit manager that you would need to have the support for
15 that decision before you make the decision?

16 A Yes.

17 Q Would you agree that to get support for a decision
18 afterwards would not be reasonable?

19 MS. McALLISTER: Object to the form of
20 the question. It's too vague and no foundation.

21 THE WITNESS: Again, I mean, my
22 understanding is obviously there was a reason, it could
23 have been a question or a concern. I don't -- I can't
24 speak to why they requested it afterwards.

25 ///

1 BY MR. McKENNA:

2 Q I'm not asking you about that.

3 A Okay.

4 Q That wasn't my question.

5 A Okay.

6 Q Remember earlier I asked you not to change my question?

7 A Okay, sorry.

8 Q My question to you is very simple. As an adjuster, as a
9 unit PIP manager, as a PIP manager you have to make a
10 decision on one of those three categories we've already
11 agreed to, to pay, to not pay, or to request additional
12 information. Once the decision was made to pay a
13 medical transportation expense at a set rate, wouldn't
14 you agree that the No-Fault Act and your policy requires
15 you to have reasonable proof or support for that
16 decision?

17 A Correct.

18 Q And in this particular case you asked for legal support
19 for that decision after the decision was already made.

20 A Correct.

21 Q What legal support or proof did you have to make that
22 decision prior to contacting Mr. Borin in April and
23 after January when the decision was made?

24 A I don't know, I wasn't involved in any discussion to the
25 rate change.

1 Q I'm not asking you if you were involved.

2 A Okay.

3 Q My question, you were involved in all of the claims for
4 the people that you supervised?

5 A Correct.

6 Q And based on what has been provided to us, you as a PIP
7 unit manager, PIP manager, and your adjusters at
8 Citizens were telling all of the insureds, including my
9 client, that after January of 2007 PIP was being paid at
10 a set rate?

11 A Yes.

12 Q You have already told us under oath that you have to be
13 knowledgeable of what is required under the No-Fault Act
14 and under your policy in order to do your job?

15 A Correct.

16 Q And in order to do your job you would have to, with
17 respect to setting a flat rate for medical mileage or
18 transportation expense, have reasonable legal proof to
19 support that decision, correct?

20 A Yes.

21 Q And at the time that decision was made you did not have
22 -- you, did not have reasonable legal proof; you sought
23 that proof four months after the decision was made; is
24 that correct?

25 MS. McALLISTER: Again, object to the

1 form of the question. It's not consistent with her
2 testimony.

3 BY MR. McKENNA:

4 Q Isn't that correct?

5 A I did not have that, no.

6 Q And you are the one we talked about earlier responsible
7 to make sure that your unit PIP managers and your
8 adjusters are applying the Michigan No-Fault Act and the
9 policy in a reasonable and fair and consistent manner to
10 all of the insureds, correct?

11 A Correct.

12 Q And would you agree that the policy of Citizens was that
13 a medical transportation expense would be applied across
14 the board at a flat rate after January of 2007?

15 A The medical mileage rate, yes.

16 Q So everyone was going to be paid that same rate that was
17 already determined to have had the foundational
18 requirements of an injury arising out of the use,
19 operation, maintenance of a motor vehicle as a motor
20 vehicle that was reasonable, necessary and related to an
21 automobile accident, and it was necessary for their
22 care, rehabilitation or recovery, Citizens said all of
23 those people get twenty cents per mile?

24 A If they were claiming mileage.

25 Q If they were claiming a mileage claim?

1 A Correct.

2 Q And you would tell them it was the policy of the company
3 that they were entitled to make a mileage claim?

4 A Yes.

5 Q And then you would tell them that they were entitled to
6 be paid twenty cents per mile?

7 MS. McALLISTER: You as in she
8 individually?

9 MR. McKENNA: The company.

10 BY MR. McKENNA:

11 Q The company would tell the insureds they were entitled
12 -- the company was supposed to tell the insureds that
13 they were entitled to medical transportation expenses.

14 MS. McALLISTER: I'll object to the form
15 of that question. It calls for a legal analysis.

16 BY MR. McKENNA:

17 Q As a -- I'm not asking -- let me tell you so we can save
18 -- I'll state for the record and go back to it. None of
19 the questions I'm asking you are to ask you for a legal
20 opinion or a legal analysis. Every one of my questions
21 will deal with your ability as a unit PIP manager, unit
22 manager, or adjuster in dealing with the legal framework
23 you have to do your job in, okay?

24 A Okay.

25 Q You understand you as an adjuster, you as a PIP manager,

1 you as a unit PIP manager had to make decisions based on
2 the legality of payments in your position as an
3 adjuster, in your position as a unit PIP manager, in
4 your position as a PIP manager, correct?

5 A Correct.

6 Q You couldn't do your job without reading statutes and
7 reading court of appeals and supreme court decisions and
8 applying that, could you?

9 A Correct.

10 Q And they didn't tell you you were a lawyer when you were
11 doing it?

12 A Correct.

13 Q And I'm not asking you to be one now, okay?

14 A Okay.

15 Q So from the standpoint of the company's decision when an
16 insured makes a claim, the company's policy and
17 procedure is to tell the insured you're entitled to
18 medical reimbursement for transportation?

19 A Correct.

20 Q And then the company made a decision in 2007 in January
21 to pay at a flat rate for all of those people that met
22 those requirements?

23 A Right, that were making a medical mileage claim, it was
24 the twenty cents, correct.

25 Q And you were in charge of how many different claims as a

1 unit manager?

2 A I don't recall how many at that time.

3 Q How many PIP unit managers worked under you?

4 A There were no unit managers at that time that worked
5 under me, it was just PIP adjusters at that time.

6 Q Okay, forgive me. Let me do it this way: Citizens is
7 still following the same policy and procedure adopted in
8 January, 2007 regarding medical transportation expenses?

9 A Yes.

10 Q Today --

11 MS. McALLISTER: You're not asking twenty
12 cents, you're asking about the IRS --

13 MR. McKENNA: I didn't state an amount.

14 MS. McALLISTER: I wanted to make sure.

15 MR. McKENNA: Well, if I say a dollar
16 amount I think it would be clear.

17 MS. McALLISTER: Okay.

18 BY MR. McKENNA:

19 Q Today as a PIP manager, how many PIP unit managers work
20 underneath you?

21 A I have six.

22 Q And those six unit managers have how many adjusters
23 working for them?

24 A Five have actual adjusters. One of my unit managers is
25 over like administrative staff, but the five that do

1 have anywhere between six to nine adjusters under them.

2 Q So if I do just the rough math, anywhere from thirty to
3 forty adjusters?

4 A Approximately thirty-four adjusters at this time.

5 Q Thirty-four?

6 A Uh-huh.

7 Q In 2007 would it have been about the same amount?

8 A It may have been a little higher, but I would say
9 between thirty-five to forty at that time.

10 Q And the adjusters have a caseload, the PIP adjusters?

11 A Yes.

12 Q And approximately how many cases do each of your --
13 strike that.

14 What is it that you want your adjusters
15 handling as a reasonable caseload for your PIP
16 adjusters?

17 A They could average between, I'd say, a hundred and
18 twenty to a hundred and fifty.

19 Q The PIP adjusters that are handling a hundred and twenty
20 to a hundred and fifty files would also have to
21 understand the legal basis upon which they pay claims,
22 deny claims, or ask for additional information?

23 A Correct.

24 Q And you would be responsible to make sure that that
25 trickles down to them?

- 1 A Correct.
- 2 Q The decision to pay at a flat rate is based on a IRS
- 3 regulation; is that correct?
- 4 A Yeah, I believe that's the baseline we are using is the
- 5 IRS.
- 6 Q Now, you used the word "baseline."
- 7 A Or guideline.
- 8 Q Guideline. Any other words that you use for it?
- 9 A No.
- 10 Q At Citizens you have forms that are used, correct?
- 11 A Correct.
- 12 Q And you have standardized forms for medical
- 13 transportation claims, correct?
- 14 A For the medical mileage, yes.
- 15 Q And you have it as a standardized form because since
- 16 January of 2007 when people make a claim for that you
- 17 have one form that you give them and on that form the
- 18 adjuster would fill in how much at a given time Citizens
- 19 was reimbursing as a flat rate?
- 20 A It's actually a letter so the adjusters are not filling
- 21 in anything. It's a letter that's already in our system
- 22 with the correct current rate.
- 23 Q Okay. So who is responsible then at Citizens to update
- 24 that letter to the current rate?
- 25 A That would be my -- well, my -- currently that's my

1 responsibility to make sure those are updated.

2 Q Going back to 2007 would it be the PIP manager's
3 responsibility to set the rate in that letter?

4 A Correct.

5 Q And is that letter kept in something called a K file?

6 A Yeah, it's a share drive.

7 Q K drive?

8 A K drive, yep.

9 Q Okay. So all of --

10 A Well, and I need to correct. I'm sorry. Back then it
11 was in the K drive, yes.

12 Q And today what is it in?

13 A We have a new computer system so it's just --

14 Q What would I call it today?

15 A It's just our claim system. It's a letter in there.
16 Sorry.

17 Q So if I wanted to access that document and didn't know
18 anything about Citizens and said I would like to have
19 access to the current letter regarding medical
20 transportation, you would just go find it as opposed to
21 it being in a K drive or something like that?

22 A Right. The current letter that goes out on all new
23 claims is currently in just our claims system. It's an
24 automatic form that on all new claims it goes out in
25 what we call the PIP packets.

1 Q Now, you train, you said -- well, strike that. Let's
2 back up.

3 When you were at Progressive and Allstate
4 and were learning about PIP, were you taught to develop
5 a relationship with the insureds?

6 A Yes. You need to have a rapport with our customers,
7 yep.

8 Q And going back to what I said earlier, it's important to
9 have a good relationship with your insureds because
10 unlike a fire claim or any other type of claim they
11 don't get to switch carriers after this claim is
12 started. Even if they switch to State Farm or some
13 other carrier, with respect to that claim the company at
14 the time the claim is made is that company for the rest
15 of that claim's lifetime?

16 A That's correct.

17 Q So while you were with those companies were you taught
18 that it is important for the adjusters to establish a
19 relationship of trust and confidence with the insureds?

20 A Yes.

21 MS. McALLISTER: Object to the extent
22 you're using those as legal terms.

23 BY MR. McKENNA:

24 Q Go ahead. Was that yes?

25 A Yes, they need to build a good rapport with the

1 customer.

2 Q And with respect to building a rapport, you would need
3 to have them trust you?

4 A We would certainly like the customer to trust us, yes.

5 Q Well, it's your intent that they trust you?

6 A Yes.

7 Q It's your intent that they have confidence in what
8 you're telling them?

9 A Yes.

10 Q It's your intent that they believe what you say?

11 A Yes.

12 Q It's your intent that when you send them a letter that
13 they should be able to trust and believe what's written
14 in there?

15 A Yes.

16 Q Do you have a form letter that you send out to each of
17 the insureds?

18 A We have many form letters.

19 Q For example, a PIP claim, do --

20 A For a PIP claim, yes.

21 Q Now, do you have a form letter that you send out at
22 Citizens from, say, 2007 to the present that indicates
23 that you are not going to be telling them what benefits
24 they're entitled to?

25 A No, I don't have a form that says that.

1 Q Do you have a form letter that you send out that says
2 you need to hire an attorney, we're not going to tell
3 you what benefits you're entitled to?

4 A No.

5 Q Do you have a form letter that says, don't trust this or
6 believe anything we say to you, we're in an adversarial
7 relationship?

8 A No.

9 Q Do you have any letter that you send out that in any way
10 informs the insureds that your interests with respect to
11 that claim are adverse to the insureds?

12 A No.

13 Q In fact, what you do is send out letters to promote
14 trust with the insured in the claims process?

15 MS. McALLISTER: Object to the form of
16 the question.

17 BY MR. McKENNA:

18 Q Is that correct?

19 A I don't know if it's to promote trust, I think it's to
20 basically outline the process of their claim and the
21 benefits they're entitled to.

22 Q And the purpose of doing that is to establish a trusting
23 relationship with the insured?

24 A Yes.

25 MS. McALLISTER: The same objection.

1 BY MR. McKENNA:

2 Q If you didn't want a trusting relationship with the
3 insured you could send out a letter that said don't
4 trust us?

5 A Yes.

6 Q Hire a lawyer?

7 A Yes.

8 Q We're not going to tell you what you're entitled to, you
9 better get legal representation?

10 A Yes.

11 Q You don't send out those types of letters to your
12 insureds, do you?

13 A No.

14 Q It is your intention that when you send letters to your
15 insureds that you expect them to trust and have
16 confidence in you, yourself as an adjuster, unit PIP
17 manager, PIP manager, or the company in general; is that
18 correct?

19 A Yes.

20 MS. McALLISTER: Again, object to the
21 form of the question, and it's been asked and answered.

22 BY MR. McKENNA:

23 Q And when you train adjusters at the company, you train
24 them to do those things with respect to establishing
25 that rapport, that trust, that confidence in the

1 adjuster and the company?

2 A Yes.

3 Q Now, with respect to the forms, and I call them forms,
4 form letters, are you as the PIP manager responsible for
5 the language that goes into those form letters?

6 A No.

7 Q Who creates those form letters in the hierarchy that we
8 discussed earlier at Citizens?

9 MS. McALLISTER: Are we talking about a
10 specific document, because there's probably a lot --

11 MR. McKENNA: Medical transportation
12 letter.

13 MS. McALLISTER: Medical mileage?

14 MR. McKENNA: Yes or -- well, why don't
15 we do this: Why don't we agree to call it what we can
16 call it and we'll move on.

17 BY MR. McKENNA:

18 Q I call it medical transportation because that's what, in
19 fact, it is, or you can call it medical mileage. Which
20 one are you comfortable with?

21 A Well, I call it medical mileage because there's other
22 means of transportation that we reimburse that really
23 isn't medical mileage.

24 Q Well, mileage is a component of a transportation claim?

25 A It's a component, correct, correct.

1 Q So what I'm talking about, you don't know when an
2 insured makes a claim what the method of the claim
3 reimbursement is going to be. What you tell them is
4 there is a benefit called medical transportation,
5 correct?

6 A Correct.

7 Q And that could include hiring a bus?

8 A Correct.

9 Q Getting a van?

10 A Yes.

11 Q Getting an ambulance?

12 A Yes.

13 Q When it comes to a claim for mileage you have a separate
14 form, a standardized form that you use, correct?

15 A Correct.

16 Q But you have a general form that you also use when
17 there's a claim, if I'm understanding you, that explains

18 to insureds that you're entitled to certain benefits as
19 a result of your accident including wage loss or
20 replacement services, things like that; is that correct?

21 A Right. They're all different forms, yes.

22 Q And what I want to make sure we're on the same page is,
23 you don't know when a claim starts and you send out a
24 generalized form letter whether the means or method for
25 the claim for mileage or transportation is going to be

1 for a van, or an ambulance, or reimbursement for someone
2 driving them?

3 A Correct.

4 Q So when you get to the point that it is a medical
5 mileage claim you have a standardized form, that
6 standardized form letter that's sent out, who approves
7 the language for that document?

8 A That would be our corporate legal.

9 Q Okay. So when we go up the hierarchy, who is it that
10 creates that form?

11 A The mileage form would have been Karen Malone, I think
12 was the one that had drafted -- I mean, prior to her I
13 don't know, but I'm talking specifically when we had
14 changed our rate she was the one that drafted the actual
15 form or change in form, and then it was then approved
16 through our corporate legal, and I don't know who
17 specifically that would have been.

18 Q Would you agree with me that the form was something that
19 came out after the decision to pay a flat rate was
20 established?

21 A No, we always had the forms. At least from when I
22 started the company I know the forms existed.

23 Q I was provided a document that is Bates numbered 05952,
24 and I'll show that to you. Do you see that?

25 A Yes.

1 Q Do you see who that document is from?

2 A Yes.

3 Q Who is it from?

4 A Yvonne Rogers.

5 Q And who is it to?

6 A Patricia Karen Malone.

7 Q Okay. In terms of hierarchy or position, who would have
8 been in a supervisory position?

9 A Patricia -- or Karen Malone was Yvonne Rogers'
10 supervisor.

11 Q Now, this is a memo from Yvonne that says -- oh, by the
12 way, can you tell me what date that is?

13 A May 25th, 2007.

14 Q Okay. And the policy to pay the flat rate for medical
15 mileage was instituted in January, five months earlier?

16 A Correct.

17 Q So this letter, attachment says, medical mileage letter
18 draft doc., which I don't think --

19 MR. McKENNA: Do you have a copy of that?

20 MS. McALLISTER: Yes. It's Defendant's
21 05953.

22 MR. McKENNA: I don't have that on here.
23 Mine ends at 952.

24 MS. McALLISTER: No, it should go through
25 5955.

1 MR. MCKENNA: Well, I'm just telling you,
2 there's the staple and everything. I only have it
3 through 952. Do you have a copy of the other ones?

4 MS. McALLISTER: I can let you review my
5 copy. That's my original. We could maybe make a copy.

6 MR. MCKENNA: Do you have 53? Is this it
7 here?

8 MS. McALLISTER: 53, yes.

9 MR. MCKENNA: Okay. Do you mind if we
10 put a sticker on these and make them an exhibit?

11 MS. McALLISTER: No, that would be fine.

12 MR. MCKENNA: Why don't you do that with
13 those three, please.

14 (Whereupon Deposition Exhibit

15 Number 2 was marked for identification
16 by the Court Reporter and attached
17 to the transcript.)

18
19 (Whereupon Deposition Exhibit

20 Number 3 was marked for identification
21 by the Court Reporter and attached
22 to the transcript.)

23 MS. McALLISTER: I think the second two
24 pages is just one e-mail that continues to a second
25 page.

1 MR. MCKENNA: That's fine. Just so we
2 can identify it.

3 MS. McALLISTER: All that's on there is
4 the e-mail logo. Do you need a separate sticker on
5 that?

6 MR. MCKENNA: Yeah, I don't have them. I
7 want to be able to --

8 MS. McALLISTER: All right. Well, they
9 were in the packet that I brought to court.

10 MR. MCKENNA: This is that packet. I'm
11 not telling you that -- that's the original staple. I
12 don't know what would have happened.

13 MS. McALLISTER: Because we talked about
14 it in hand and went over it that day in court. But
15 anyway, let's proceed. I put the 592 in front of her.

16 (Whereupon Deposition Exhibit
17 Number 4 was marked for identification
18 by the Court Reporter and attached
19 to the transcript.)

20
21 (Whereupon Deposition Exhibit
22 Number 5 was marked for identification
23 by the Court Reporter and attached
24 to the transcript.)

25 ///

1 BY MR. McKENNA:

2 Q 592 is the document that says in May regarding a medical
3 mileage draft from Karen, attached is a draft of the
4 medical mileage letter with the language we discussed.
5 So this is a document, it's evidencing a creation of the
6 medical mileage form letter we talked about?

7 A Uh-huh.

8 Q Is that correct? You have to say --

9 A Oh, I'm sorry. To me, I'm assuming this is a revision
10 to, because we had one previously.

11 Q Is this letter evidencing the creation of a medical
12 mileage form letter document?

13 A Yes.

14 Q And it's taking place in May?

15 A Yes, that's the date.

16 Q Do you have either in my client's claim file or
17 somewhere else the medical mileage form for the flat
18 rate medical mileage form that was being used from
19 January, 2007 until sometime after this revision
20 occurred?

21 A Yes, I believe -- I thought I had saw it a minute ago.

22 MS. McALLISTER: Yes, we produced that in
23 the first set.

24 BY MR. McKENNA:

25 Q Well, I'm not trying to play games with you, but I have

1 a document that's called 05950 and that's from someone,
2 Carl Burkiel (phonetically) --

3 A Oh, April Burkiel (ph.)?

4 Q April Burkiel (ph.) ?

5 MS. McALLISTER: I'm sorry, what is the
6 Bates?

7 MR. McKENNA: It's 05950.

8 MS. McALLISTER: Okay.

9 BY MR. McKENNA:

10 Q Is that the form file letter that would have been used
11 after January of 2007 and before the 05952 revision?

12 A Yes, this is the letter I saw and had a copy of, yes.

13 Q And --

14 MS. McALLISTER: And by "this," you're
15 referring to 5950?

16 THE WITNESS: Yes, correct.

17 MR. McKENNA: I thought I identified it.
18 That's fine.

19 BY MR. McKENNA:

20 Q With respect to what I've marked as Exhibit Number 3
21 from today's date, 05953, this is the attachment that's
22 referred to in 05952, the e-mail from Yvonne Rogers to
23 Patricia Karen Malone, Friday, May 25th, 2007, and it
24 says, to whom it may concern, the Michigan No-Fault
25 Statute provides that you are to be reimbursed for

1 eligible medical mileage. Effective we will be
2 utilizing 2007 guidelines for determining the medical
3 mileage. Citizens will reimburse at twenty cents per
4 mile. If you have additional information to support
5 greater costs associated with your medical mileage,
6 please submit proofs for further consideration?

7 A Yes. This is a form that doesn't go out on all PIP
8 packets. That's the one that goes out with our mileage
9 form at that time when it was changed.

10 Q Okay. So just so I'm clear, 05950 is the letter that
11 goes out?

12 A Yes.

13 Q And this revision document, Exhibit Number 3, does not
14 go out?

15 A Correct. This is used if we have a question that comes
16 up regarding what we're reimbursing. This is a template
17 letter that the adjusters use to then send out advising
18 that they can submit additional information.

19 Q Let's see if I got this. The document 05950 is the form
20 letter for medical mileage transportation expenses that
21 was being used since January, 2007 policy change,
22 correct?

23 A Correct.

24 Q And if I'm understanding you correct, this is the same
25 document sent today that hasn't changed, except to the

1 extent there's a different number in there for the
2 amount?

3 A Correct.

4 Q And the change to that document for the amount is
5 something that you do right now currently?

6 A Yes. I would make sure that's changed, yes.

7 Q With respect to 05953, which has been marked Exhibit 3
8 for today, this document does not go out to the insureds
9 unless there is a disagreement or some problem with
10 paying the amount in 05950?

11 A Correct.

12 Q So would you agree -- and do you have a copy of 05950
13 that you could look at?

14 MS. McALLISTER: I believe it's a two-
15 page document as we produced it, Counsel.

16 MR. McKENNA: Yeah, I'm only talking
17 about the letter.

18 MS. McALLISTER: But they both go out.

19 MR. McKENNA: That's great. I'm only
20 talking about the letter.

21 MS. McALLISTER: Okay.

22 BY MR. McKENNA:

23 Q I'm only talking about the Bates number I talked about,
24 05950, okay?

25 A Yes.

Q Now, I want to show you so you can have it for side-by-side comparison, 05953, Exhibit 3 from today's date, this paragraph on Exhibit 3, the Michigan No-Fault -- do you see that?

A Yes.

Q Down to where it says, twenty cents per mile?

A Yes.

Q Would you agree that that very same paragraph is included in 05950?

A Yes, it is.

Q And 05950, the letter that you send out, says to insureds that -- have met the foundational requirements, injured arising out of the use, operation or maintenance of a vehicle as a vehicle, reasonable and necessary related for care, rehabilitation, recovery, we're going to pay you how much per mile?

A This letter was twenty cents per mile.

Q And you're going to pay that -- you're telling the insureds with this letter that you're going to pay that and they don't have to submit any proofs other than how many miles they drove?

A Correct.

Q And you're saying that to them and you're expecting them to believe that the information contained on here is true?

1 A Correct.

2 Q And you're sending that out with the expectation that
3 they believe you?

4 A Yes.

5 Q And you're sending that out with the expectation that
6 they trust what is contained on that document is
7 accurate?

8 A Yes.

9 Q And you mention in the document the Michigan No-Fault
10 Statute?

11 A Yes.

12 Q So this is an adjuster sending out a document to an
13 insured, typically the insured would be a non-lawyer,
14 correct?

15 A Correct.

16 Q Typically the adjuster is not a lawyer?

17 A Correct.

18 Q But here the adjuster is sending out a letter to the
19 insured mentioning a legal statute?

20 A Yes.

21 Q And not only is mentioning the legal statute, but it's
22 saying that the Michigan No-Fault Statute provides that
23 you're to be reimbursed for eligible medical mileage
24 once you've determined those foundational requirements,
25 that's every Citizens' insured, correct?

1 A Correct.

2 Q Then it says, utilizing the 2007 guidelines. Would you
3 agree that if you didn't know anything as an adjuster or
4 weren't a lawyer that when you read those two sentences
5 together, the Michigan No-Fault Statute provides, and
6 then utilizing the 2007 guidelines, that that could be
7 construed by an insured to mean that those guidelines
8 are in the Michigan No-Fault Act?

9 MS. McALLISTER: Object to the form of
10 the question. You're asking her to speculate as to what
11 others would believe.

12 BY MR. McKENNA:

13 Q I'm asking you what you would believe if you didn't know
14 anything different as an adjuster. I mean, you know,
15 for example -- let me ask you this way:

16 You know there are no 2007 guidelines in
17 the Michigan No-Fault Act?

18 A Me, personally?

19 Q Yes.

20 A No.

21 Q You know that, right?

22 A Yes, I know that.

23 Q What I'm saying to you is if you didn't have your job as
24 an adjuster in the past, and the PIP manager, and PIP
25 unit manager and you were to read those two sentences

1 together, would you believe that that utilizing 2007
2 guidelines was referring to something that's in the
3 Michigan No-Fault Act?

4 MS. McALLISTER: Same objection.

5 THE WITNESS: I could.

6 BY MR. McKENNA:

7 Q Okay. Is that something that was intended on the part
8 of Citizens to have the insureds, when they read this
9 letter, believe that utilizing the 2007 guidelines was
10 referring to something in the Michigan No-Fault Statute?

11 MS. McALLISTER: Objection to the form of
12 the question. She testified she wasn't involved in
13 making that decision.

14 BY MR. McKENNA:

15 Q Go ahead.

16 A I wouldn't know their intent when they did this letter
17 because I wasn't involved in that.

18 Q Do you remember earlier we talked about dairying and
19 communication being clear and concise and unambiguous?

20 A Yes.

21 Q When you send form letters to the insureds do you have
22 the same belief that the form letters that you send out
23 should be clear and concise and unambiguous?

24 A Yes.

25 Q And it would be reasonable to be clear, concise and

1 unambiguous?

2 A Yes.

3 Q We talked earlier about what reasonable is and there's
4 repercussions under the No-Fault Act about reasonable,
5 correct?

6 A Yes.

7 Q If you act unreasonably there are penalties for it,
8 correct?

9 A Yes.

10 Q And you testified that at the insurance companies you
11 worked at, including Citizens, that you have either been
12 trained or currently train people that to be reasonable
13 means to be fair?

14 A Yes.

15 Q Would you agree that the opposite of reasonable would be
16 unreasonable?

17 A Yes.

18 Q Therefore, the opposite of fair would be unfair?

19 A Yes.

20 Q And would you agree it would be unfair to mislead your
21 insureds?

22 A Yes.

23 Q Would you agree that stating that utilizing the 2007
24 guidelines in that letter after the sentence with the
25 Michigan No-Fault Statute provides could be misleading?

1 MS. McALLISTER: Object to the form of
2 the question. Again, it requires speculation.

3 BY MR. McKENNA:

4 Q I'm only asking you.

5 MS. McALLISTER: Well, you're asking her
6 based on your argument as to what you think the letter
7 means.

8 BY MR. McKENNA:

9 Q I'm asking you, ma'am -- it's a very clear question --
10 do you think that could be misleading?

11 A I think --

12 MS. McALLISTER: Same objection.

13 THE WITNESS: I believe it could be
14 interpreted many ways. I can't say how people would
15 interpret this.

16 BY MR. McKENNA:

17 Q Do you remember earlier when we talked about what clear
18 and concise and unambiguous means?

19 A Yes.

20 Q You have a four-year -- you're college educated, high
21 school graduate, right?

22 A Yes.

23 Q You know what the words clear, concise and unambiguous
24 means?

25 A Yes.

1 Q Would you say that that document is clear, concise and
2 unambiguous as it relates to whether or not the Michigan
3 No-Fault Act has a 2007 guideline in it?

4 A It may not be clear to some people.

5 Q And your responsibility in charge of unit PIP managers
6 and adjusters is to make sure -- we talked about earlier
7 when something's brought to your attention -- that all
8 of your insureds are treated reasonable, fairly,
9 correct?

10 A Yes.

11 Q So when -- you have seen this document for at least the
12 last two years, two-and-a-half years?

13 A Yes.

14 Q And you've read it?

15 A Yes.

16 Q And so it's something that was available to you to read
17 and look at before today?

18 A Yes.

19 Q Are you telling me that today's the first time you
20 looked at that and thought that that document could be
21 unclear, non-concise and ambiguous?

22 A Well, you're asking me if it could be interpreted that
23 way. I mean, I can't speculate how people would, I'm
24 saying it could be.

25 Q Well, but see, your responsibility is to do what you

1 think in a supervisory role is fair.

2 A Well, my responsibility isn't wording our legal letters.

3 Q I didn't say it was.

4 A Okay.

5 Q And again, please don't change my questions.

6 A Okay.

7 Q Your responsibility is to ensure that the insureds are
8 being treated fairly and reasonably?

9 A Yes.

10 Q And you want to make sure that the information is clear,
11 concise and unambiguous?

12 A Yes.

13 Q So as a college educated woman who has been doing this
14 job for a number of years with different companies, you
15 recognize by reading that that it can be interpreted in
16 more than one way with respect to whether the No-Fault
17 Statute provides for a 2007 guideline?

18 MS. McALLISTER: Same objection as to the
19 form of the question.

20 You can answer.

21 BY MR. McKENNA:

22 Q Go ahead.

23 A Yes.

24 Q Now, I understand you didn't approve the language,
25 correct?

1 A Correct.

2 Q But your responsibility, you told me before, was that if
3 you see something being done that's unreasonable or
4 unfair you either fix it or let somebody else know so
5 that they can fix it, correct?

6 A Correct.

7 Q And in looking at this document today and realizing
8 today what you've said, that it is something that's
9 capable of being misinterpreted, unclear, ambiguous,
10 your responsibility as a PIP manager would be to make
11 sure that all of these documents are clear, are concise
12 and unambiguous, correct?

13 A Yes.

14 Q So would your responsibility as the PIP manager include
15 making a request for these documents to be changed so
16 that the insureds aren't misled?

17 A Yes.

18 Q In doing your job, are you going to request that this
19 document be changed?

20 A I can certainly bring this up, yes.

21 Q I'm not asking you if you could, I'm asking you will
22 you?

23 A Yes.

24 Q And you will do that because as part of your job you
25 don't want to have people be cheated out of benefits

1 they're entitled to, do you?

2 MS. McALLISTER: Object to the form of
3 the question.

4 BY MR. McKENNA:

5 Q Do you?

6 A No.

7 VIDEO TECHNICIAN: Going off the record.
8 This marks the end of tape number one. The time is
9 3:52:35 p.m.

10 (Whereupon a recess was held
11 in the proceedings from 3:52 p.m.
12 to 3:58 p.m.)

13 VIDEO TECHNICIAN: Back on the record.
14 This marks the beginning of tape number two. The time
15 is 3:58:45 p.m.

16 BY MR. McKENNA:

17 Q Before we went off the record we were talking about
18 Exhibit 0950, or Bates number, forgive me, and Exhibit
19 Number 3 which Counsel was kind enough to give me a copy
20 of is undated, correct?

21 A Correct.

22 Q And we were doing a side-by-side comparison earlier,
23 that this paragraph, the first paragraph is included in
24 05950?

25 A That's correct.

1 Q Now, from just a purely cost standpoint, if you're
2 already going to be creating a document and sending it
3 to insureds as a form, would you agree it doesn't cost
4 any more to type in a few extra words, for example,
5 another sentence?

6 A To my knowledge, no.

7 Q So would you agree that with respect to the information
8 that you send in these form letters, you already said
9 you want to establish this special relationship of trust
10 and confidence with your insureds, correct?

11 A Correct.

12 Q And you want to then have them trust and believe
13 everything you send them, correct?

14 MS. McALLISTER: Objection, that is not
15 what she said.

16 BY MR. McKENNA:

17 Q You want to have them trust and rely on everything you
18 send them, don't you?

19 MS. McALLISTER: Same objection.

20 THE WITNESS: Yes.

21 BY MR. McKENNA:

22 Q Well, it wouldn't make much sense to send out paperwork
23 if you didn't expect anybody to read it and believe it,
24 would it?

25 A Correct.

1 Q So from the standpoint of preparing these form letters
2 and things that get sent out, you individually, your PIP
3 unit managers, and your adjusters, and the company
4 expect the people to read what you send them and rely on
5 it, don't you?

6 A Yes.

7 Q Or you wouldn't send it, would you?

8 A Correct.

9 Q It would be kind of stupid to waste the time and money
10 to send stuff out that you didn't expect anybody to
11 read, trust, and believe in, correct?

12 A Correct.

13 Q Now, with respect to a form document, when you send it
14 out you're telling the insureds what they're entitled
15 to?

16 A Yes.

17 Q And 05950 is telling them that you will pay at that time
18 twenty cents, currently it's, what, twenty-seven cents?

19 A Yes.

20 Q So what you're telling them is if you have mileage, send
21 us the number of miles and we will pay you at a
22 multiplication factor of point two zero or point two
23 seven, whatever the rate is, correct?

24 A Correct.

25 Q And you don't have to submit anything to us, we're going

1 to give that to you, correct?

2 A Correct.

3 Q And if they read that letter, you want them to read it,
4 you want them to trust it, correct?

5 A Correct.

6 Q So in reading this form letter, when we get to this
7 utilizing the 2007 guidelines for determining the rate
8 of mileage, would it cost anything to put in this
9 document the words, IRS guidelines?

10 A To my knowledge, no.

11 Q That's just three little letters, right?

12 A Correct.

13 Q And that would go a long way to clearing up an ambiguity
14 as to whether or not there was guidelines in the
15 Michigan No-Fault Act?

16 MS. McALLISTER: Objection, it assumes
17 that there is ambiguity. We don't agree with your
18 presumption.

19 MR. McKENNA: Oh, I think we've already
20 established that.

21 BY MR. McKENNA:

22 Q But wouldn't you agree that putting in IRS in front of
23 guidelines or utilizing the 2007 guidelines would make a
24 distinction between what is or is not in the No-Fault
25 Act and what is an IRS guideline?

1 A It could, yes.

2 Q By not putting it on there it makes it capable of being
3 misinterpreted as being guidelines from the No-Fault
4 Act, doesn't it?

5 MS. McALLISTER: Object to the form of
6 the question.

7 THE WITNESS: I mean, I think it's clear
8 but it could be interpreted that way by someone else.

9 BY MR. McKENNA:

10 Q Well, by definition -- again, you're a four-year college
11 student, got a degree, you know what is ambiguous and
12 you know what's unambiguous, correct?

13 A Yes.

14 Q And these are all supposed to -- to be reasonable, these
15 should all be unambiguous, these forms?

16 A Yes.

17 MS. McALLISTER: Object to the extent
18 you're asking for a legal conclusion.

19 BY MR. McKENNA:

20 Q We've already established, I'm only asking you as an
21 adjuster, PIP manager, PIP unit manager these questions,
22 not as a lawyer, right?

23 A Correct.

24 Q And in that capacity you want to be reasonable -- to
25 comply with the No-Fault Act and the Statute, you want

1 your actions as a company, as a manager, as a unit
2 manager, as an adjuster to be unambiguous and not
3 misleading, correct?

4 A Correct.

5 Q And it wouldn't cost any more money to print in here
6 utilizing the IRS 2007 guidelines for medical mileage,
7 would it?

8 MS. McALLISTER: Asked and answered.

9 THE WITNESS: Right; to my knowledge, no.

10 BY MR. McKENNA:

11 Q And it wouldn't cost any more money to tell the insureds
12 when we go to Exhibit 3 a sentence that you've already
13 typed that says if you have additional information to
14 support a greater cost associated with your medical
15 mileage, please submit proofs for further consideration?

16 A Correct.

17 Q Somebody made a decision not to put that sentence in
18 this document, 05950, correct?

19 A Correct.

20 Q Who did that?

21 A I don't know.

22 Q Would you agree with me that you want to give all of the
23 information to an insured regarding their claim that you
24 have?

25 A Correct.

1 MS. McALLISTER: I object to the form of
2 the question. What do you mean, all the information
3 that she has --

4 MR. McKENNA: Yes.

5 MS. McALLISTER: -- as an adjuster that's
6 been trained?

7 MR. McKENNA: Yes.

8 MS. McALLISTER: How is she supposed to
9 do a download of her brain? You said all the
10 information that she has.

11 MR. McKENNA: Well, you know what, if you
12 want to play games this could go a lot longer.

13 MS. McALLISTER: Well, I think you're
14 playing games.

15 BY MR. McKENNA:

16 Q I'm only referring to the information you have regarding
17 benefits and what they're entitled to and how to go
18 about getting those benefits. You certainly don't tell
19 people how to bake things from your favorite recipe when
20 they talk to you when they're making claims, do you?

21 A No.

22 Q You utilize specific information that is appropriate to
23 the task at hand, correct?

24 A Correct.

25 Q So when I'm talking about giving them the information

1 you have -- we talked about that at the very beginning
2 of the deposition; do you remember that?

3 A Yes.

4 Q -- you want to provide all of the information regarding
5 claims and how to make them and what benefits they're
6 entitled in a non-misleading way?

7 A Correct.

8 Q And would you agree that 05950 doesn't tell insureds
9 that they're entitled to more than twenty cents?

10 A Correct.

11 Q And would you agree that reading 05950 would tell the
12 insureds that this is what you are paying consistent
13 with the Michigan No-Fault Act and some 2007 guideline
14 that you don't identify?

15 A Correct.

16 Q It doesn't say anything on there about submitting
17 proofs?

18 A That's correct.

19 Q But you know, you personally know, that they're entitled
20 to make claims beyond twenty cents?

21 A That's correct.

22 Q And you know personally how they are to go about making
23 those claims beyond twenty cents?

24 A Correct.

25 Q But you personally have been looking at this form for

1 over two-and-a-half years and haven't done anything to
2 put that information in that form letter to those
3 insureds, have you?

4 A No.

5 Q But somebody at your company did, at least as it relates
6 to Exhibit 3, they added this sentence, if you have
7 additional information to support a greater cost
8 associated with your medical mileage, please submit
9 proofs for further consideration, correct?

10 A Correct.

11 Q It didn't cost anything more to put that on this piece
12 of paper than it would on 05950, did it?

13 A No.

14 MS. McALLISTER: Asked and answered.

15 BY MR. McKENNA:

16 Q So if you put that sentence from Exhibit Number 3,
17 05953, on 05950 you would be providing that information
18 to the insureds making medical claims telling them that
19 they don't have to take just twenty cents a mile, they
20 can submit proofs and get more?

21 A Correct.

22 Q But you didn't do that?

23 A No, I did not.

24 Q Well, and you have not asked that that be cleared up,
25 either?

1 MS. McALLISTER: Objection, it assumes
2 that she thought it was ambiguous.

3 BY MR. McKENNA:

4 Q Is that correct? You have not requested that this form,
5 05950, be changed in any way, correct?

6 A No, I have not requested that.

7 Q You told me earlier that you were going to request that
8 05950 be changed to make sure that there's no ambiguity
9 regarding what guidelines they're talking about,
10 correct?

11 A Correct.

12 Q Now, I'm going to ask you the same question with respect
13 to 05953 in this one sentence in Exhibit 3. If that one
14 sentence was included in 05950 it would be very clear,
15 very unambiguous, very concisely stated that you don't
16 have to take this twenty cents we're talking about?

17 A Yes.

18 Q But without that sentence in this document what you're
19 sending off to your insureds doesn't give them any
20 indication that they can make a claim for more than
21 twenty cents?

22 MS. McALLISTER: Objection, to the extent
23 you assume it's required.

24 BY MR. McKENNA:

25 Q Is that correct?

1 A Right, it's not in the letter, no.

2 Q And you expect them to read this and follow this
3 document, 05950?

4 MS. McALLISTER: Asked and answered.

5 THE WITNESS: Yes.

6 BY MR. McKENNA:

7 Q And if they don't -- strike that.

8 If they wanted additional information --
9 strike that.

10 If they wanted additional monies for
11 medical mileage, this document doesn't tell them that
12 they're entitled to it or even how to get it, correct?

13 A Correct.

14 Q With the inclusion of one sentence that was already
15 written on an undated document by someone at Citizens on
16 05953, Exhibit Number 3, they would be told?

17 A Yes.

18 Q Now, I asked you earlier about making a change to the
19 document to identify what these guidelines are. In your
20 job, this was pointed out to you today for the first
21 time?

22 A No. This letter is a separate letter that's sent, so --

23 Q I understand.

24 A Right.

25 Q But it's been pointed out to you today that this

1 sentence isn't included on this document and that makes
2 it even further misleading to your insureds about what
3 they're entitled to or how to go about getting what
4 they're entitled to, doesn't it?

5 A Right.

6 MS. McALLISTER: Object to the form of
7 the question.

8 MR. McKENNA: Did you get the answer?

9 THE WITNESS: Right. I knew this was not
10 in here, in this letter. The 05953, that sentence was
11 not in there.

12 BY MR. McKENNA:

13 Q My question was, it was pointed out to you today for the
14 first time that without this sentence in 05950 it could
15 be misleading and ambiguous to the insureds in not
16 giving them the information about how to get more than
17 twenty cents per mile?

18 MS. McALLISTER: Object to form.

19 THE WITNESS: Yes, because you're raising
20 that, that it is ambiguous. So, yes, that was our
21 discussion today.

22 BY MR. McKENNA:

23 Q Right, and so now I'm going to ask you the next
24 question. Because that sentence isn't in there, are you
25 also going to ask at Citizens that they change the form

1 to include this sentence so that all of the insureds
2 know that they don't have to take just twenty cents per
3 mile?

4 A Yes, this is something I can elevate, yes.

5 Q And it's something that when you say elevate, as opposed
6 to just saying, hey, there was a lawyer who took my
7 deposition and he pointed out these two things, do you
8 believe the insureds are entitled to have these
9 documents be clear, concise and unambiguous?

10 A Yes.

11 Q Do you believe that including this sentence from Exhibit
12 Number 3, 05953, would let the insureds know in a clear,
13 concise and unambiguous manner that they don't have to
14 take that set amount?

15 A Yes.

16 Q Can you think of a valid insurance reason that that
17 sentence was never included in this form?

18 MS. McALLISTER: Object to foundation.

19 THE WITNESS: I don't know.

20 BY MR. McKENNA:

21 Q Would you agree that people not reading this won't know
22 -- your general insureds, typical insureds, reading this
23 document without that extra sentence from Exhibit 3
24 wouldn't know about how to make a claim if even one
25 existed for additional money over twenty cents per mile?

1 MS. McALLISTER: Objection, lack of
2 foundation, speculation.

3 THE WITNESS: Correct, unless they called
4 and had an issue with what we were paying.

5 BY MR. McKENNA:

6 Q Well, the way this is written, they're being told that
7 this is all we're going to pay you is twenty cents,
8 isn't it?

9 A Uh-huh.

10 Q Is that correct?

11 A Yes.

12 Q It doesn't say we're in negotiations, does it?

13 A Correct.

14 Q It doesn't say our opening offer is twenty cents, does
15 it?

16 A Correct.

17 Q It doesn't say our baseline is twenty cents, does it?

18 A Correct. I'm sorry, can I back up? The baseline, yes,
19 would be our twenty cents.

20 Q No, I'm sorry. It doesn't use the term baseline?

21 A No.

22 Q It doesn't suggest to people, like you're going to ABC
23 Warehouse and it's three ninety-nine or less, make your
24 best offer?

25 A Correct.

1 Q So there's no negotiation with us, give us your best
2 offer and we'll see what happens in this, is there?

3 A Correct.

4 Q This is telling them, this is our policy supported by
5 the No-Fault act, and some utilized 2007 guidelines that
6 you don't identify?

7 A Correct.

8 Q By the way, there's no mention in 05950 of this being a
9 starting point?

10 A That's correct.

11 Q So I can move on to another area, would you agree that
12 reading this in the way that it's written, your
13 expectation is that you're insureds are going to be
14 making claims by giving you total number of miles, and
15 then you're going to do a math calculation and pay them
16 based on those miles?

17 A Correct.

18 Q Not an invitation to them to submit proofs for a
19 reimbursement rate above twenty cents?

20 A Correct.

21 Q Now, at Citizens do you have a department called fraud
22 investigation unit, or claims investigation unit?

23 A Special investigations unit.

24 Q SIU?

25 A SIU.

1 Q All right. Everybody has a different acronym. Do you
2 know how many people work in SIU?

3 A No.

4 Q Have you ever dealt with SIU?

5 A Yes.

6 Q As an adjuster or as a manager?

7 A At Citizens as a manager.

8 Q SIU is a department that you have that's set up that
9 when there's a suspicion of fraud SIU gets involved to
10 investigate; is that correct?

11 A That could be one example, yes.

12 Q Would you agree that the SIU department is set up to
13 catch fraud being perpetrated by insureds and/or
14 providers?

15 A It could be either, yes.

16 Q But that's the two types or categories of people that
17 they investigate?

18 A No, there could be more. Well, yes, it would be
19 provider, I'm sorry. Yes.

20 Q It's either one or the other.

21 A No, I'm sorry. I was thinking something else, but it
22 falls into the provider category. Sorry.

23 Q There's only two types of claimants.

24 A Yes.

25 Q Those that render a service and the insured?

1 A Correct.

2 Q What's the name of the SIU department that investigates
3 fraud by adjusters?

4 A I don't know. Well, Department of Insurance Bureau
5 would get involved if there was allegations.

6 Q No, no, no. I'm only talking at Citizens.

7 A Oh, at Citizens?

8 Q Yes. You have this big department called SIU?

9 A Right.

10 Q They investigate providers and they investigate
11 insureds?

12 A Yes.

13 Q What's the name of the department at Citizens that
14 investigates fraud by adjusters?

15 A There would be no special investigations unit for that.
16 It would be leadership as well as our counsel if there
17 was an allegation made.

18 Q What was the name of the department that investigates
19 fraud by PIP unit managers?

20 A Again, it would be leadership involvement as well as
21 corporate counsel, would be my guess, if an allegation
22 was made.

23 Q Let's throw them altogether and maybe we can -- there is
24 no department that investigates fraud by adjusters, PIP
25 unit managers or PIP managers, is there?

1 A To my knowledge, no.

2 Q Now, fraud is something you teach and train adjusters
3 and unit PIP managers about, isn't it? It's part of
4 your --

5 A Not me specifically, no.

6 Q Isn't that one of the things that you want to teach them
7 about?

8 A Yes.

9 Q So in your position, you're responsible to teach people
10 that work under you about fraud, or detecting fraud, or
11 what to do if they think there is fraud, correct?

12 A To make sure they get training on it, yes.

13 Q Okay. And do you train people that fraud is where
14 somebody asks for payment of money from Citizens that
15 they know they're not entitled to?

16 A I wouldn't classify that as fraud, if they're requesting
17 a payment.

18 Q Well, would you consider it fraud to be asked for money
19 that you know you're not entitled to get?

20 A If we believe there's fraudulent activity involved in
21 that claim, yes.

22 Q Well, that's what I'm trying to get at. Whether it's a
23 provider or an insured --

24 A Right.

25 Q --Citizens only has to pay benefits that are reasonable,

1 necessary and related.

2 A Right.

3 Q If they're unreasonable, they're not necessary, or
4 they're not related and people know that and make a
5 claim for money anyway that would be fraud, wouldn't it?

6 A Not necessarily. It could be -- I'm just giving you an
7 example. If someone is making a claim for reimbursement
8 for a payment, it could be such a thing that we have
9 documentation not to support reasonableness or medical
10 necessity, and it would just simply be a denial of the
11 benefit.

12 Q I understand that, but for purposes of what fraud is
13 there's an intent that follows fraud; would you agree
14 with that?

15 A I agree.

16 Q And you teach that to your adjusters and your managers,
17 correct?

18 A Correct.

19 Q What I'm saying to you is not that you're denying the
20 claim, it's not just fraud if you pay it. It can be
21 fraudulent and you catch it and you deny the payment.

22 A Correct.

23 Q What I'm talking about from the standpoint of your
24 company and what you train and teach adjusters and
25 managers is that when it's a provider -- let's say for

1 example a doctor submits a claim for one hundred visits
2 that never occurred. He knows or she knows they're not
3 entitled to the money but they're claiming it anyway.
4 That would be fraudulent intent, correct?

5 A Correct.

6 Q And if an insured, for example, made a claim for mileage
7 or attendant care that never occurred, they know they're
8 not entitled to it and they submit it anyway, that would
9 be fraudulent intent?

10 A Correct.

11 Q So would you agree that this fraudulent intent or the
12 intent to commit an act of fraud in the insurance
13 context is one where you're asking for money you know
14 you're not entitled to?

15 MS. McALLISTER: Are you asking is that
16 the only, or is that one example?

17 MR. McKENNA: Fair enough.

18 BY MR. McKENNA:

19 Q That is one example of an act of fraud, when someone is
20 asking for money they know they're not entitled to.

21 A That's correct.

22 Q Now, I think what you were getting at earlier is when
23 you said not necessarily, somebody could make a mistake
24 and submit a claim -- they submit a receipt for their
25 heart medicine and they have a broken foot and it was

1 just a mistake. I want to make sure you understand that
2 I'm not saying there's a mistake made. I want you to
3 understand that when I'm asking these questions about
4 fraud that there's intent. No mistake, they know
5 they're not entitled.

6 A Okay.

7 Q You train your adjusters and your managers that when
8 they suspect that that type of claim is being made, that
9 they send that claim to the fraud or special
10 investigations unit, correct?

11 A Correct.

12 Q And I'm assuming, and this is where the next line of
13 questioning is, that you have some procedure or protocol
14 to follow where you want to be advised as their manager
15 that there's a case that they have that went to SIU?

16 A Correct, the unit managers would, yes.

17 Q Because you want to know on your files that are there
18 because you're going to want to pull that file and check
19 and see if there's other fraud in it as well, correct?

20 A Correct.

21 Q Now, everything in an insurance company, when we're
22 talking about claims, the rules apply to both parties,
23 don't they? In other words, what's fair for the insured
24 should be fair for the company. What's reasonable for
25 the company should be reasonable for the insured,

1 correct?

2 MS. McALLISTER: Object to that. It's
3 without foundation and the form of the question. I
4 don't know what you're talking about.

5 THE WITNESS: I don't understand. Could
6 you be more specific, please?

7 BY MR. McKENNA:

8 Q Sure. The No-Fault Act in the policy applies to both
9 parties?

10 A That's correct.

11 Q What is reasonable to one -- there are reasonable
12 requests to the insured under the policy, and there are
13 reasonable requests of the insurance company under the
14 policy, correct?

15 A Correct.

16 Q There are reasonable requests under the statute,
17 reasonable requests under the statute to both parties?

18 A Correct.

19 Q So what I'm saying to you is both parties to this
20 contract have to act reasonably to one another with
21 respect to the claims making process in terms of what
22 the policy says and in terms of what the No-Fault Act
23 says, correct?

24 A Correct.

25 Q So if, for example, we go back to -- with respect to a

1 fraud claim, if you suspect that the insured or the
2 insured's provider is making a request for benefits that
3 they know they're not entitled to and it's been paid,
4 you're going to want your money back, aren't you?

5 A Correct.

6 Q And when an insured or a provider makes a claim to
7 Citizens, they have the same reasonable expectation that
8 they're going to be paid what they're entitled to, don't
9 they?

10 A Yes.

11 MS. McALLISTER: Object to foundation.

12 BY MR. McKENNA:

13 Q Is that correct?

14 A Yes.

15 Q So when, for example, an adjuster at Citizens, a claims
16 PIP unit manager, or claims manager makes a decision
17 with respect to the payment of a benefit that you know
18 an insured is entitled to and you intentionally say no,
19 you're not going to pay it, is that any more or less
20 fraudulent than an insured or provider doing the same
21 thing?

22 MS. McALLISTER: Object to the form of
23 the question. It requires speculation and a legal
24 analysis.

25 THE WITNESS: Yeah, I would have to be

1 given a specific example.

2 BY MR. McKENNA:

3 Q If you are the adjuster, and for reasons known only to
4 you you know this insured is entitled to receive medical
5 payments for transportation or mileage expense, and you
6 say even though I know they're entitled to it, I'm not
7 paying. That insured is being defrauded, aren't they?

8 MS. McALLISTER: The same objections.

9 THE WITNESS: They're not being paid what
10 is owed to them.

11 BY MR. McKENNA:

12 Q And they're being defrauded, aren't they? Their
13 entitlement to money that the company is keeping against
14 them, correct?

15 A Yes.

16 MS. McALLISTER: Again, you're asking for
17 fraud. That is a legal conclusion.

18 MR. McKENNA: I'm not asking for fraud as
19 a legal conclusion.

20 BY MR. McKENNA:

21 Q You identify fraud every day at work, don't you?

22 A Yes.

23 Q I'm only asking you the same thing you identify to the
24 insureds and providers back to the company. If the
25 company by any of its agents or employees refuses to pay

1 a benefit that the insured is entitled to or a provider
2 is entitled to, the company is enriched by not having
3 paid that claim, aren't they?

4 A If they're withholding benefits, then yes.

5 Q Ten dollars on a claim by an insured against the company
6 that's fraudulent is no different than ten dollars kept
7 by the company from an insured that's fraudulent, is it?

8 A If it was intentionally kept. It could be -- an example
9 you said with an adjuster, it could be maybe an
10 experienced adjuster who made the wrong decision on a
11 claim.

12 Q That's why I wanted to make sure when we went down this
13 line that we're talking about intent; they know.

14 A Right.

15 Q An insured slips in by mistake a receipt for a heart
16 medication as a prescription. They're not committing an
17 act of fraud, it was a mistake and you point it out to
18 them, right?

19 A Correct.

20 Q So you say, we only have to pay what's reasonable, your
21 heart's not attached to your foot, we're not paying for
22 heart medication for a broken foot.

23 A Correct.

24 Q Now, what I'm telling you is the same thing the other
25 way. I asked you, do the insureds have the reasonable

1 expectation that the adjusters, the PIP claim manager,
2 unit managers know what benefits that the insureds are
3 entitled to, and you said yes.

4 A Yes.

5 Q So what I'm asking you is when you know what benefits
6 people are entitled to and you intentionally don't pay
7 them, whether it's ten dollars or a hundred dollars,
8 that is the same thing as an insured asking for money
9 they're not entitled to when they know they're not
10 entitled to it, isn't it?

11 MS. McALLISTER: Object to the form of
12 the question.

13 BY MR. McKENNA:

14 Q Go ahead.

15 A It could be, yes.

16 Q Well, can you think of a situation where it isn't fraud
17 to withhold money from somebody you know that they're
18 entitled to in the context of an insurance claim?

19 MS. McALLISTER: Objection to use of the
20 word fraud.

21 THE WITNESS: Yes, to me -- I mean, for
22 fraud we would consider that bad faith, that we're not
23 honoring their benefits in the policy.

24 BY MR. McKENNA:

25 Q Is there a difference, regardless of what you call it,

1 when you keep money from somebody that you know they're
2 entitled to?

3 A No --

4 Q Does the name really make a difference?

5 A No, it could fall under fraud --

6 Q Fraud or bad faith?

7 A Uh-huh, yes.

8 Q There shouldn't be -- you can't think of a legitimate
9 reason to defraud an insured, can you?

10 A No.

11 Q So when an insured is entitled to receive medical
12 benefits, whether it's transportation or other benefits,
13 you are supposed to tell them what they're entitled to,
14 correct?

15 A Correct.

16 MS. McALLISTER: Objection to form.

17 BY MR. McKENNA:

18 Q You are supposed to tell them how to get the benefit?

19 MS. McALLISTER: Objection to form.

20 BY MR. McKENNA:

21 Q Is that correct?

22 A Yes.

23 Q And if they've made a claim for the benefit wrongly,
24 whether they've asked for too much or too little, you
25 were supposed to tell them?

1 A Yes, if it's -- yes, exactly.

2 Q And you were supposed to pay them what they're entitled
3 to regardless of how they asked, correct?

4 A Correct.

5 Q If you know that an insured has, in fact, incurred a
6 claim or expense and you don't tell them, is it any
7 different because you've been silent about it than if
8 you actively and openly told them you're not going to
9 pay?

10 MS. McALLISTER: Object to the form of
11 the question. It assumes that the company has a legal
12 obligation to do that.

13 THE WITNESS: Right.

14 BY MR. McKENNA:

15 Q Well, you told me that you train adjusters, you were an
16 adjuster, you train your adjusters to inform the
17 insureds of all of the benefits they're entitled to,
18 correct?

19 A Right, based on their injury and what their needs would
20 be, those are the benefits that we discuss with them.

21 Q Would you agree that -- well, you agreed earlier that
22 that's what a reasonably prudent adjuster would do,
23 correct?

24 A Yes.

25 Q That's what a reasonably prudent company should do,

1 correct?

2 A Yes.

3 Q And you believe that Citizens is a reasonably prudent
4 company?

5 A Yes.

6 Q And you believe that you're a reasonably prudent claims
7 manager?

8 A Yes.

9 Q So with all those reasonably prudents in there, you
10 believe that a reasonably prudent company should tell an
11 insured of benefits that they're entitled to that you
12 know that they have incurred?

13 A Yes.

14 Q Whether they ask you for it or not?

15 A Yes.

16 Q You should not sit back silently, cross your fingers and
17 hope to God they never make the claim and you won't have
18 to pay it, should you?

19 A No.

20 MS. McALLISTER: Objection, legal
21 conclusion.

22 BY MR. McKENNA:

23 Q It would be unreasonable, it would be criminal to sit
24 back and not tell them what they're entitled to,
25 wouldn't it?

1 MS. McALLISTER: Objection --

2 THE WITNESS: I don't know if I'd say
3 criminal, but I don't think that that would be acting in
4 good faith for that customer.

5 BY MR. McKENNA:

6 Q Well, to withhold money from somebody that you know
7 they're entitled to, is that something that, as you
8 understand it, is allowed under the No-Fault Statute?

9 A No.

10 Q Is it something that's allowed under the policy?

11 A No.

12 Q Is it something that's allowed under a legal opinion?

13 A No.

14 Q So if you got a legal opinion that told you to do that,
15 that would be an unreasonable legal opinion, wouldn't

16 it?

17 A Yes.

18 Q And you as an adjuster know that?

19 A Yes.

20 Q You don't need a lawyer to tell you to act unreasonably,
21 do you?

22 A No.

23 Q So if you got a legal opinion that said to be silent
24 with respect to claims, you know that that would be
25 unreasonable?

1 A Yes.

2 MS. McALLISTER: Object to the form of
3 the question.

4 BY MR. McKENNA:

5 Q Your special relationship with the insureds means that
6 you want them to trust you and tell you what they've
7 incurred for expenses and you will tell them how to get
8 their money for it, correct?

9 MS. McALLISTER: Objection to "special
10 relationship" and the form of the question.

11 THE WITNESS: Right, for customer service
12 we want to ensure that we advise them of the benefits on
13 the policy and how they can request reimbursement for
14 those benefits.

15 BY MR. McKENNA:

16 Q For customer service, customer relations you want to
17 establish a relationship from the beginning of trust
18 with that insured?

19 A Yes.

20 MS. McALLISTER: Same objection.

21 BY MR. McKENNA:

22 Q You have no other reason for them to trust you other
23 than the relationship you have with Citizens, correct?

24 A Correct.

25 Q And you don't have to have them trust you, do you?

1 A No, we don't have to.

2 Q But you decide -- you, as a company have decided that
3 you want to create that relationship. It is a special
4 or different relationship than you would otherwise have?

5 MS. McALLISTER: Objection to the form of
6 the question.

7 BY MR. McKENNA:

8 Q Is that correct?

9 A Correct.

10 Q So once you've established that special relationship --
11 well, let me ask you this: Let's say, have you ever
12 encountered an insured and an adjuster that just
13 couldn't get along?

14 A Yes.

15 Q And you try and move people around and make people
16 happy?

17 A There's times, yes.

18 Q Sometimes if you're an adjuster or a manager you want to
19 move them to somebody else, maybe it's a personality
20 thing?

21 A That could be an example, yes.

22 Q And no adjuster should have to be subjected to an
23 unreasonable relationship with an insured, nor should an
24 insured be subjected to an unreasonable relationship
25 with an adjuster. If it's a personality conflict, you

1 try and fix it, right?

2 A Correct.

3 Q You don't have to do that by the No-Fault Statute, do
4 you?

5 A No.

6 Q You don't have to do it in the policy, do you?

7 A No.

8 Q But going back to this special relationship that you
9 establish with these insureds, when they're making the
10 claims you want to, because they're going to be your
11 insured for the rest of the life of that claim, do
12 what's reasonable and do what's necessary for them,
13 correct?

14 A Correct.

15 Q Now, with respect to doing what's reasonable and what's
16 necessary for them, you would want to tell them in the
17 context of a medical mileage claim how to go about
18 getting their claims paid for what they're actually
19 entitled to, correct?

20 A Correct.

21 Q Now, do you have a background in accounting?

22 A No.

23 Q Have you ever read an IRS statute or regulation?

24 A No.

25 Q How is it that you could send out letters to all of your

1 insureds and go into this form 5950 and make these
2 changes regarding guidelines that you've never even
3 read?

4 A Because I'm not the one that makes the changes.

5 Q But you're sending out this letter regarding guidelines
6 that you've never even read. How do you know what those
7 guidelines are?

8 A I know as far as the rates. I have not gone into
9 detail. I know the medical mileage and moving rate at
10 that time was twenty cents per mile, that is as far as
11 I've gone into any IRS material.

12 Q I asked you the question, you've never read the IRS
13 regulation -- a regulation.

14 A No, and I thought you meant in depth as far as what
15 makes up the guidelines and the mileage.

16 Q I'm very clear, and I'll try and be even more clear for
17 you. Have you ever read an IRS regulation?

18 MS. McALLISTER: Are you including to see
19 what the rate is in that question?

20 MR. McKENNA: You know what, it's
21 everything; any. It's global.

22 THE WITNESS: Okay. I've read their
23 outline of the medical moving rate and mileage, yes.

24 BY MR. McKENNA:

25 Q When did you read it?

- 1 A Back in 2007.
- 2 Q And did you read the whole thing?
- 3 A No, just the page that showed what the rate was.
- 4 Q Just the number?
- 5 A Yes.
- 6 Q What was the other number that was in that regulation?
- 7 A There were several numbers.
- 8 Q Okay. Well, what was the number for transportation
9 expenses, the business transportation expense; do you
10 know?
- 11 A At that time, no, I didn't see that rate.
- 12 Q Do you know why -- well, if you read the statute, if you
13 read the regulation you'd know why the IRS moving and
14 medical expense and charitable expense deduction is
15 lower than the business transportation expense, wouldn't
16 you?
- 17 A If I read that, yes.
- 18 Q And do you know why it's twenty cents at that time as
19 compared to say, fifty or fifty-eight cents for the
20 business deduction?
- 21 A No.
- 22 Q You wouldn't want to cheat people, would you?
- 23 A No.
- 24 Q Would you agree that using medical mileage in the
25 context of 5950 would give the impression to people

1 reading it that the IRS has a guideline or somebody has
2 a guideline that says for medical this is all you're
3 allowed?

4 MS. McALLISTER: Objection, causes
5 speculation for her to determine what's in somebody
6 else's mind.

7 THE WITNESS: No, and I wouldn't know
8 that.

9 BY MR. McKENNA:

10 Q Now, with respect to the IRS guidelines, you're aware,
11 aren't you, that the IRS uses what's called a composite?

12 A No.

13 Q You pay twenty cents a mile so people don't have to --
14 and when I say twenty cents, at a given time. I
15 understand it's fluctuated and changed. You pay a flat
16 rate so they don't have to submit bills and gas receipts
17 and oil changes and things like that, right?

18 MS. McALLISTER: "You," being Citizens?

19 MR. McKENNA: Citizens.

20 THE WITNESS: Citizens? No, we pay the
21 baseline of that time the twenty cents per mile.

22 BY MR. McKENNA:

23 Q Why do you just pay the twenty cents?

24 A I was not part of the discussion to set that rate.

25 Q Oh, but you're a part of the implementation of it?

1 A No, other than my part in this was asking to get the
2 legal opinion, which I did, I was asked what my
3 knowledge was as far as what other carriers were paying,
4 so that was my part in it, and then informing my team of
5 the change.

6 Q But you're responsible in the sense that you're telling
7 your people they have to use this form?

8 A Yes.

9 Q You're responsible in telling your people not to provide
10 the information that's included in Exhibit 3, 05953, to
11 the insureds when they make a medical mileage claim,
12 correct?

13 MS. McALLISTER: Object to form.

14 THE WITNESS: No, I'm not the one that
15 set these, I just communicated the forms were there and
16 this is how they use them.

17 BY MR. McKENNA:

18 Q I know you told me you didn't set them.

19 A Okay.

20 Q What I'm telling you is that you're the one that's
21 responsible -- if you wanted this sentence right here in
22 Exhibit 3, if you have additional information, and the
23 rest of that sentence, if you wanted that to be told to
24 every adjuster to tell every insured you just have to
25 tell them to do it, don't you?

1 A No. I need to run that by our corporate office.

2 Q Why would you need to run it by -- well, you want to run
3 it by corporate office to get it, what, through legal?

4 A Yes. All of our letters are reviewed through legal. I
5 can't make those changes.

6 Q You know that an insured is entitled under the statute
7 and under the policy to the information contained in
8 this sentence in Exhibit 3, document 05953, if you have
9 additional information to support a greater cost
10 associated with your medical mileage, please submit
11 proofs. You know that they're entitled to that, don't
12 you?

13 MS. McALLISTER: Object to the form of
14 the question.

15 THE WITNESS: They're entitled for us to
16 explain what we're paying for the benefit, which is the
17 rate.

18 BY MR. McKENNA:

19 Q No, you know that they're entitled to the information
20 about how to make a mileage claim?

21 MS. McALLISTER: Objection, asked and
22 answered.

23 THE WITNESS: Which is this is how they
24 do it in here. If there is a concern or a question
25 raised, then we certainly need to inform them of this,

1 yes.

2 BY MR. McKENNA:

3 Q So if they're stupid, if they're ignorant, if they don't
4 know any better they're going to get twenty cents a
5 mile, but if they have the God given intelligence to
6 read it and object and complain you're going to tell
7 them it's a baseline and a starting point and give us
8 additional information and we might pay you more?

9 MS. McALLISTER: Objection to the form of
10 the question. It's argumentative and it is inconsistent
11 with her testimony. She's answered your base question
12 without all the arguments multiple times.

13 BY MR. McKENNA:

14 Q Go ahead, please.

15 A Yes, if there's a question or a concern raised of what
16 they're being reimbursed, then we certainly allow them
17 to submit additional information. No, this is not in
18 our standard form letter that goes out on every claim.

19 Q Exhibit Number 4 and 5 is from Yvonne Rodgers to
20 Patricia Karen Malone, and this is the one that we had
21 talked about, Karen, once you approve I will share with
22 Terry and Lee.

23 A At the bottom of this, yes, was on the other exhibit you
24 showed me which was separate, yeah. Right here. So it
25 looks like the bottom of 05954, the bottom part of that

1 is in 05952.

2 Q Right. But I mean they basically say the same thing,
3 these documents?

4 A Right. Correct.

5 Q Except that in Exhibit 4 from Patricia Karen Malone it
6 says, I removed, quote, greater cost, unquote, and left
7 it more generic.

8 A Yes, that's what it says.

9 Q So when it says if you have greater -- what she's
10 referring to is a statement to the insureds, if you have
11 costs greater than the twenty cents, the words greater
12 costs were not included in this final form?

13 A I would be speculating because I didn't see the initial
14 draft of her letter.

15 Q Yeah, but you have it.

16 A No, that's a letter we have in place on our shared
17 drive, so I don't know if this is the same letter.

18 Q I'm sorry. If we go to 05952 --

19 A Okay.

20 Q -- it says, Karen, attached is a draft of the medical
21 letter.

22 A Okay.

23 Q And this was represented -- Exhibit 3 was represented to
24 me to be that letter --

25 A -- as attached.

1 Q -- it was attached.

2 A Okay.

3 Q Now, Exhibit 4 and 5 are talking about this is from
4 Karen Malone, I removed, quote, greater costs, unquote,
5 and left it more generic.

6 MS. McALLISTER: It was not, in fact,
7 removed.

8 MR. McKENNA: That's what I'm getting at.

9 BY MR. McKENNA:

10 Q On Exhibit 3, 05953, it says if you have additional
11 information to support a greater cost, this is undated.

12 A Correct.

13 Q Exhibit 3 is undated, so we don't know when that
14 happened.

15 A Correct.

16 Q But Exhibit 4 is dated May 29th and it's saying that
17 greater cost was removed. Are you aware of there being
18 a document that is used that has the words greater cost
19 removed?

20 A To my knowledge, no.

21 Q To your knowledge, Exhibit 3 is the one that's being
22 used through today's date?

23 A That is -- yes.

24 Q All right. Who is Terry?

25 A I don't know.

1 Q Who is Lee?

2 A I don't know who that is.

3 Q I asked you how this document thing got created and you
4 talked about Karen Malone.

5 A Uh-huh.

6 Q And then submitted up to corporate. Now, this is from
7 Karen saying to -- I'm sorry, from Yvonne saying to
8 Karen, how does this look, or whatever it is, and then
9 this appears to be Karen Malone responding?

10 A Karen Malone is writing this part, the how does this
11 look.

12 Q The how does this look?

13 A Correct.

14 Q So she's asking someone who works under her how it
15 looks, correct?

16 A Correct.

17 Q And then it says that -- down here, from Yvonne to
18 Karen, attached is a draft. So it appears that Karen
19 was approving what Yvonne wrote?

20 A Yes, that's how it appears.

21 Q Once you approve I will share with Terry and Lee. So
22 did Karen Malone have the authority to approve Exhibit 3
23 on her own?

24 MS. McALLISTER: Objection to foundation.

25 THE WITNESS: I have no knowledge.

1 BY MR. McKENNA:

2 Q Well, there's nothing in Exhibit 4 or 5 that says legal
3 is involved, is there?

4 A No, there's nothing in here that says that.

5 Q And we don't know who Terry and Lee are; you don't know
6 who they are?

7 A No, I don't.

8 Q This document, 05851, is the letter from Mr. Borin. Do
9 you have a copy of that available?

10 MS. McALLISTER: I don't think I brought
11 that. It might be out in the car.

12 BY MR. McKENNA:

13 Q Then I'll put that in front of you, if you don't mind.
14 We'll share.

15 A Sure.

16 Q Exhibit Number 2 is an e-mail apparently from you and it
17 says it's dated April 17th, 2007?

18 A Yes.

19 Q The reply -- I'm sorry, if you can move that.

20 A Sure.

21 Q -- appears to be April 30, 2007 from Mr. Borin?

22 A That's correct.

23 Q And for the record, Mr. Borin's reply is 05851 through,
24 I believe it's 853.

25 MS. McALLISTER: No, there's attachments.

1 MR. McKENNA: I'm just talking about the
2 letter.

3 MS. McALLISTER: The letter had
4 attachments through the end of this.

5 MR. McKENNA: I'm only referring to the
6 actual letter. The three page letter. I'm not saying
7 the attachments are three pages, just the letter is
8 three pages. Those are the numbers for those three
9 pages.

10 BY MR. McKENNA:

11 Q Now, your e-mail says, Hi, Jim. Do you know him?

12 A Yes.

13 Q Citizens would like to have you complete a legal opinion
14 regarding mileage. Again, this is four months after
15 you've already made a decision regarding mileage and
16 what you're going to pay, correct?

17 MS. McALLISTER: "You," being Citizens?

18 MR. McKENNA: Pardon me?

19 MS. McALLISTER: "You," being Citizens?

20 BY MR. McKENNA:

21 Q "You" being Citizens.

22 A Citizens, yes, correct.

23 Q So Citizens is asking for a legal opinion regarding
24 mileage which is a legal opinion regarding the mileage
25 change that you've already done, correct?

1 A Correct.

2 Q So four months later you want a legal opinion to support
3 your decision?

4 A Citizens did, yes.

5 Q Well, you work for them.

6 A Yes, uh-huh.

7 Q But that's what you were telling him, I need a legal
8 opinion to support what Citizens has done?

9 A Yes.

10 Q That's not reasonable under the No-Fault Act and the
11 policy, is it, to do something -- to get information to
12 support a decision after the fact?

13 A I don't know why they asked me to get this, so --

14 Q I didn't ask you why. It's not reasonable to do
15 something after the fact as the basis for support for
16 the decision under the No-Fault Act and the policy, is
17 it?

18 MS. McALLISTER: Object to the form of
19 the question, and I'm further objecting that we did this
20 line of questioning well over an hour ago.

21 BY MR. McKENNA:

22 Q Is it?

23 A Again, I don't know how it was utilized, so I would be
24 speculating.

25 Q You didn't have this document --

1 A No, we did not have this document at the time.

2 Q -- when you implemented the policy?

3 A Correct.

4 Q What we talked about earlier is you personally had no
5 knowledge under the No-Fault Act that would support that
6 policy, you just did what you were told? No legal
7 opinion to support that policy that you were aware of in
8 January, correct?

9 MS. McALLISTER: You said several things.
10 You are right that she said that she didn't know the
11 legal basis.

12 MR. McKENNA: That's what I'm getting at.

13 BY MR. McKENNA:

14 Q You didn't know --

15 A Correct.

16 Q -- of a legal basis to support the policy change in
17 January, correct?

18 A Correct.

19 Q And you didn't know of one in April?

20 A Correct.

21 Q But you were telling your people to apply a policy that
22 you didn't know of a legal foundation for?

23 MS. McALLISTER: Object to the form of
24 the question.

25 ///

1 BY MR. McKENNA:

2 Q Is that correct?

3 A I couldn't tell them as far as why or how the rate was
4 changed, no.

5 Q You could only tell them to do --

6 A Tell them that it had changed, correct.

7 Q Yours is not to ask how or why, just to do?

8 A Correct.

9 Q And that's what you told them?

10 A Yes.

11 Q So they were trusting you?

12 A Correct.

13 Q Because they have to do what you tell them?

14 A Correct.

15 Q And they were implementing a policy that you, as the
16 boss, as the supervisor, had no legal basis for the
17 implementation of; is that correct?

18 MS. McALLISTER: Again, object to the
19 form of the question. She didn't say there was no legal
20 basis, she said that she didn't know it.

21 BY MR. McKENNA:

22 Q You didn't know of any, correct?

23 A No, correct.

24 Q Now, somebody above you asked you to send out this memo?

25 A Yes.

1 Q Who is that?

2 A Yvonne Rogers.

3 Q And Yvonne Rogers is somebody who was involved in the
4 implementation of this?

5 A Yes.

6 Q So did Yvonne Rogers tell you, I have a legal basis, or
7 did she tell you, go find one for us?

8 A No, she just requested could I reach out to Jim and ask
9 for a legal opinion as it pertained to medical mileage
10 and transportation.

11 Q And shouldn't that have been done before we have this
12 change in policy?

13 MS. McALLISTER: Objection, hypothetical.
14 Speculation as to whether it was done before or not.

15 MR. McKENNA: Well, no, there's no
16 hypothetical supposition about it.

17 THE WITNESS: His specific --

18 BY MR. McKENNA:

19 Q It was done after the fact.

20 A His legal opinion was done after the fact, yes.

21 Q You're not aware of any other legal opinion done before
22 it was changed?

23 A No, I'm not aware of any.

24 Q And it wouldn't take much to give that information to
25 you from Citizens, would it?

1 A If I requested it.

2 Q Well, if they had it they could send it to you?

3 A Right, if I requested it.

4 Q And you never did?

5 A No.

6 Q When they asked you to get this one did you ask them if
7 they had already obtained one?

8 A No.

9 Q So Citizens would like a legal opinion specifically
10 around the fact in the No-Fault Act, No-Fault Statute
11 does not mandate rate and/or guidelines that must be
12 used when establishing rates, correct?

13 A Correct.

14 Q Then it says, you can either e-mail me back or mail it
15 to my attention, right?

16 A Yes.

17 Q Then you got this letter, this three page letter from
18 Mr. Borin dated April 30, 2007, and it talks about your
19 request for my opinion, and it goes through some case
20 law, okay, and it says that in conclusion, on the second
21 page going on to the third page, it is uncontested that
22 a No-Fault insurer must pay the reasonable charge
23 incurred for mileage related to obtaining the medical
24 care.

25 A That's correct.

1 Q That's pretty straight forward, isn't it?

2 A Yes.

3 Q You already knew that?

4 A Yes.

5 Q The amount of the reimbursement which is not established
6 by the No-Fault Act must be reasonable. We already knew
7 that too, didn't we?

8 A Yes.

9 Q In viewing the limited guidelines established by the
10 attorney general opinion and some appellate decisions
11 that he mentioned there are three considerations. The
12 first, the Workers Comp. fee schedule, you guys didn't
13 take that advice; you didn't use that, did you?

14 A Not to my knowledge.

15 Q So we'll pass that one and we'll go to number two on
16 page three, 05853. That a No-Fault insurer may
17 establish an arbitrary rate of reimbursement. Are you
18 aware of there being the word arbitrary anywhere in the
19 No-Fault policy for Citizens?

20 A Not to my knowledge.

21 Q Are you aware of there being the word arbitrary anywhere
22 in the No-Fault Statute?

23 A I don't recall there being any.

24 Q The word that's used is reasonable, correct?

25 A Correct.

1 Q So you didn't follow setting up something arbitrary
2 then, did you?

3 MS. McALLISTER: I object to what he's
4 meaning as arbitrary.

5 THE WITNESS: Yeah, I don't know.

6 MR. McKENNA: That's a good point.

7 BY MR. McKENNA:

8 Q Arbitrary is one of those words that can be vague,
9 right?

10 A Yes, correct.

11 Q In fact, that's part of the definition of arbitrary,
12 isn't it, that it's vague and of no substance. It's
13 just arbitrary, right?

14 A I don't know the exact definition, but, yes, it can be
15 vague, right.

16 Q Let me ask you this: From your standpoint as a PIP
17 manager, unit manager, or adjuster, you were never
18 taught nor have you taught anyone that they can
19 arbitrarily pay benefits?

20 A Correct.

21 Q Because paying benefits in an arbitrary manner would be
22 unreasonable.

23 MS. McALLISTER: Objection, lack of
24 foundation.

25 THE WITNESS: Correct -- I mean, yeah. I

1 mean, we don't --

2 BY MR. McKENNA:

3 Q Paying benefits in an arbitrary manner would be
4 unreasonable, correct?

5 MS. McALLISTER: Object to the form of
6 the question in terms of how you're defining arbitrary.

7 MR. McKENNA: I'm not defining it. We've
8 defined it in the sense that to be arbitrary would be to
9 be without substance, to be vague or having an ambiguity
10 to it.

11 BY MR. McKENNA:

12 Q Earlier, if you recall, I asked you the question would
13 it be reasonable for an insured to expect that all
14 things being considered, one adjuster to another,
15 they're going to get paid the same amount for the same
16 claim, right?

17 A If they're equal, yes.

18 Q Right.

19 A Yes.

20 Q So to be arbitrary would be to not pay the same amount,
21 that's one part of a definition of it?

22 A That's one part, correct.

23 Q But what you've decided is to pay everybody the same
24 rate regardless of what car they're driving, regardless
25 of a lot of things, just pay them one rate?

- 1 A Right, for medical mileage that would be our baseline,
2 correct.
- 3 Q Is that arbitrary to you?
- 4 A If we're setting a baseline? As a company that would be
5 -- I guess you could interpret it's an arbitrary
6 baseline rate that we're paying.
- 7 Q I'm not trying to interpret. I mean, you've got a
8 college education, you had English class, literature
9 class, you know about words, right?
- 10 A Well, to me, I would word it as reasonable. We're
11 setting a reasonable baseline for medical mileage.
- 12 Q Well, this one, number two, uses the word arbitrary.
- 13 A But that's Jim Borin's word.
- 14 Q I understand. I don't need you to point that out. I
15 said, this one -- I didn't say you.
- 16 A Right.
- 17 Q This one says arbitrary.
- 18 A That's what it says.
- 19 Q Your understanding of the No-Fault Act would mean to set
20 an arbitrary rate wouldn't be reasonable, because
21 arbitrary wouldn't be the same, it wouldn't be
22 consistent, it wouldn't be based on what someone has
23 actually incurred as an expense, wouldn't it?
- 24 A I don't think that's a term I would use, would be the
25 arbitrary rate, no.

1 Q But, I mean, if you were to write this you wouldn't say,
2 we're going to establish an arbitrary rate?

3 A No, I would say we're going to establish a reasonable
4 rate.

5 Q So apparently arbitrary in number two for Mr. Borin was
6 also passed over, right?

7 A I don't know. I did not utilize this opinion, so this
8 was forwarded to my --

9 Q Oh, it went to somebody else?

10 A When this came in to me, all I did was give this to my
11 supervisor.

12 Q Fair enough. But did you read it?

13 A Yes, long ago. Yes.

14 Q All right. So by being arbitrary it would be -- well,
15 let's see what it does say. I think he defines it,
16 doesn't he?

17 Presumably pay on a uniform basis to all
18 claimants, right?

19 A Yes.

20 Q But which is subject to reconsideration if the claimant
21 can establish greater incurred expense. Actually, it
22 looks like that's the one you guys did choose.

23 A That could be, yes.

24 Q Well, it is. Arbitrary rate of reimbursement pays on a
25 uniform basis. You're paying on a uniform basis, aren't

1 you?

2 MS. McALLISTER: Well, that's a different
3 question than whether they're being arbitrary.

4 BY MR. McKENNA:

5 Q You're paying on a uniform basis, aren't you?

6 A Yes.

7 Q And this says that a No-Fault insurer may establish an
8 arbitrary rate of reimbursement which is presumably pays
9 on a uniform basis.

10 A Correct, that's what it says.

11 Q Isn't that -- that's what you've done?

12 MS. McALLISTER: Object to the form of
13 the question. It assumes it was arbitrary.

14 BY MR. McKENNA:

15 Q But this is what you've done.

16 MS. McALLISTER: She's disagreed with
17 that.

18 MR. McKENNA: I don't think she's
19 disagreed at all.

20 THE WITNESS: I stated that we've based
21 it on a reasonable baseline, or you could say the
22 uniform, whatever you want to use.

23 BY MR. McKENNA:

24 Q So you're saying it's not arbitrary?

25 A In my mind and my interpretation, no.

1 Q But it is a uniform basis to all its claimants?

2 A For medical mileage, yes.

3 Q That's all we're talking about.

4 A Yep.

5 Q That's what all this is talking about too, right?

6 A Yes, exactly.

7 Q On the same page; pun intended.

8 A Okay.

9 Q But which is subject to reconsideration if the claimant
10 can establish greater incurred expense.

11 A Correct, that's what it says.

12 Q Now, that's the same sentence we talked about earlier,
13 sort of, that was on Exhibit 3, 05953, but wasn't
14 included in 05950.

15 A That's correct.

16 Q We already talked about the fact that you have knowledge
17 and information about how to make a claim and your
18 insureds don't have it, you're supposed to give that to
19 them to be a reasonably prudent company?

20 MS. McALLISTER: Objection, I don't agree
21 with the characterization of the testimony, and you're
22 rehashing ground that you've already asked, at least
23 several times, Mr. McKenna.

24 MR. McKENNA: Foundational; I don't want
25 to hear you object.

1 THE WITNESS: Yes.

2 BY MR. McKENNA:

3 Q Now, when we get to Number 3, while not expressly
4 stated, it would be legally appropriately -- there's got
5 to be a typo in there somewhere, and I'm assuming it
6 would be, it would be legally appropriate for the No-
7 Fault insurer to rely upon the submissions of a claimant
8 before determining the appropriate rate.

9 A Yes.

10 Q You don't have in your form letter, send us your proofs
11 for your mileage and then we'll determine a rate?

12 A Correct.

13 Q That would be like inviting them to negotiate, wouldn't
14 it?

15 MS. McALLISTER: Object to the form of
16 the question.

17 THE WITNESS: No, it would -- right, we
18 would have them send in -- right, that's what that was
19 saying, is if they chose that rate.

20 BY MR. McKENNA:

21 Q I'm trying to put it in layman's terms. That would be
22 like inviting a negotiation?

23 A Correct.

24 Q Kind of like, did you ever have a car stolen or damaged
25 and you make a claim and you argue over how much was it

1 worth?

2 A I haven't personally, no.

3 Q I've unfortunately had that problem, and you're arguing
4 with them; no, no, I put new tires on it, it's worth
5 more. It's got a great engine, changed the oil every
6 three thousand miles. You're negotiating. This, Number
7 3, is asking you to kind of do that with the insureds,
8 and you guys didn't want to do that, did you?

9 A No, we didn't do that. No, we did not do that.

10 Q In other words, there is no legal responsibility imposed
11 on the No-Fault insurer to establish a rate, but you
12 decided to do it anyway?

13 A Yes.

14 Q So you have, in fact, established a rate that when
15 asking about it the lawyer said you don't have to, so
16 your company decided to establish the IRS guideline as a
17 rate?

18 A Yes.

19 MR. McKENNA: Why don't we stop there
20 because they're going to kick us out of here and we'll
21 reschedule this to finish it.

22 VIDEO TECHNICIAN: Going off the record.
23 The time is 4:53:10 p.m.

24

25

* * * *

1 (Whereupon the deposition of
2 AMY LUNA was concluded
3 about 4:53 p.m.)
4

5 * * * *
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CERTIFICATION PAGE

STATE OF MICHIGAN)
)
COUNTY OF MACOMB)

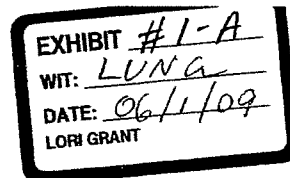
I CERTIFY that this transcript, consisting of 136 pages, is a complete, true and correct record of the testimony of AMY LUNA, held in this case on Monday, June 1, 2009.

I ALSO CERTIFY that prior to taking this deposition AMY LUNA was duly sworn to tell the truth.

I ALSO CERTIFY that I am not a relative or employee of or an attorney for a party; or a relative or employee of an attorney for a party; or financially interested in the action.

LORI GRANT, CSMR 4686
63335 Berwick Court
Washington Township, Michigan 48095
586-752-4614

Dated: June 3, 2009



STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

KARLA ONDRUS as the Guardian and Conservator
for ANDY ONDRUS, a protected Person, on behalf of
himself and all others similarly situated,

Plaintiff,

vs

Case No. 08-004408-NF
Hon: Peter J. Maceroni

CITIZENS INSURANCE COMPANY,

Defendant.

JAMES McKENNA (P41587)
Co-Counsel for Plaintiff
24825 Little Mack
St. Clair Shores, MI 48080
(586) 779-7810

ROBERT S. HUTH, JR. (P42531)
Co-Counsel for Defendant
19500 Hall Road, Suite 100
Clinton Township, MI 48038
(586) 412-4900

PAUL A. ZEBROWSKI (P44427)
THOMAS A. BISCUP (P40380)
Co-Counsel for Plaintiff
45581 Village Blvd
Shelby Township, MI 48315
(586) 566-7266

LORI MCALLISTER (P39501)
Co-Counsel for Defendant
201 Townsend Street, Suite 900
Lansing, MI 48933
(517) 374-9150

NOTICE OF TAKING DEPOSITION
DUCES TECUM OF AMY LUNA

PLEASE TAKE NOTICE that on June 1, 2009 commencing at 1:30 p.m. at the Macomb County Bar Association, 40 North Main Street, Suite 435, Mount Clemens, MI 48043, Plaintiff will take the deposition of Amy Luna pursuant to MCR 2.306. The deposition(s) shall be taken upon oral examination by the Plaintiff before a Notary Public in accordance with the Michigan Court Rules of 1985.

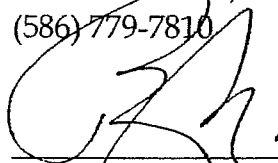
The deponent is requested to bring to the deposition the following items:

1. The entire original PIP/Claim file for Andy Ondrus.
2. All documents reflecting or related to Defendant's decision to use or adopt the IRS medical and moving rate as the rate Defendant will or does pay for medical mileage benefits under the no-fault act.
3. All documents supporting or related to Defendant's determination that the IRS medical and moving rate is a reasonable charge for "medical mileage" benefits under the no-fault act.
4. All documents identifying or reflecting all individuals involved in making or approving the decision to use or adopt the IRS medical and moving rate as the rate Defendant will or does pay for medical mileage benefits under the no-fault act.
5. All documents supporting or demonstrating that the IRS business standard mileage rate is not a reasonable charge for "medical mileage" benefits under the no-fault act.
6. All communications to policyholders or covered individuals regarding Defendant's decision to use or adopt the IRS medical and moving rate as the rate Defendant will or does pay for medical mileage benefits under the no-fault act.
7. All communications to policyholders or covered individuals informing them that the IRS business standard mileage rate is a reasonable charge for "medical mileage" benefits under the no-fault act.
8. All documents, listing or identifying all individuals who are insureds of Citizens in Michigan or otherwise covered by Citizens for first party no-fault benefits, and for whom Citizens has paid and continues to pay medical mileage for automobile related injuries, at a rate in accordance with Citizens' policy of adopting the IRS medical and moving mileage rate.
9. Any and all surveys conducted by Defendant regarding rates paid for medical mileage.

You are invited to attend and cross-examine the Deponent.

Respectfully submitted,

James McKenna (P41587)
Co-Counsel for Plaintiff
24825 Little Mack
St. Clair Shores, MI 48080
(586) 779-7810

A handwritten signature in black ink, appearing to read 'P. Zebrowski', is written over a horizontal line.

Paul Zebrowski (P44427)
Thomas A. Biscup (P40380)
Attorneys for Plaintiff
45581 Village Blvd.
Shelby Twp., MI 48315
(586) 566-7266

Dated: May 27, 2009

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

KARLA ONDRUS as the Guardian and
Conservator for ANDY ONDRUS, a protected
Person, on behalf of himself and all others
similarly situated,

Plaintiff,

Case No. 08-00408-NF

Hon. Peter J. Maceroni

vs.

CITIZENS INSURANCE COMPANY,

Defendant.

JAMES McKENNA (P41587)
Co-Counsel for Plaintiff
24825 Little Mack
St. Clair Shores, MI 48080
586-779-7810

LORI MCALLISTER (P39501)
Dykema Gossett PLLC
Co-Counsel for Defendant
201 Townsend Street, Suite 900
Lansing, MI 48933
517-374-9150

PAUL A. ZEBROWSKI (P44427)
THOMAS A. BISCUP (P40380)
Co-Counsel for Plaintiff
45581 Village Blvd.
Shelby Township, MI 48315
586-566-7266

ROBERT S. HUTH, JR. (P42531)
Kirk and Huth P.C.
Co-Counsel for Defendant
19500 Hall Road Suite 100
Clinton Township Mi. 48038
586-412-4900

CROSS-NOTICE OF TAKING DEPOSITION OF AMY LUNA BY VISUAL
ELECTRONIC RECORD

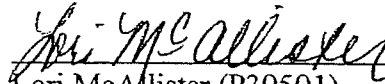
Defendant, through its counsel, hereby gives notice that the deposition of Amy Luna
noticed by Plaintiff for June 1, 2009 at the offices of the Macomb County Bar Association, 40 N.
Main Street, Suite 435, Mt. Clemens, MI, 48043, shall be visually recorded by electronic means
pursuant to MCR 2.315.

RECEIVED 6/1/09

Date: May 28, 2009

Respectfully submitted,

Dykema Gossett PLLC

A handwritten signature in cursive script, appearing to read "Lori McAllister", is written over a horizontal line.

Lori McAllister (P39501)

Co-Counsel for Defendant

201 Townsend St., Suite 900

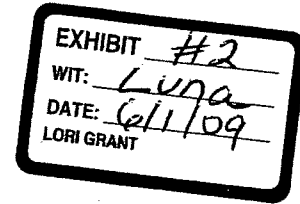
Lansing, MI 48933

(517) 374-9150

LAN01\203022.1

ID\LM51-010767/0043

From: "AMY LUNA" <ALUNA@HANOVER.COM>
To: "James Borin" <jborin@garanlucow.com>
Date: 4/17/07 1:57PM
Subject: Request for Legal Opinion



Hi Jim -

Citizens would like to have you complete a Legal Opinion regarding mileage - specifically around the fact that the MI No-Fault statute does not mandate rate and/or guidelines that must be used when establishing rates.

You can either email this back to me and/or mail to my attention at

808 N Highlander Way
Howell, MI 48844

Thank you

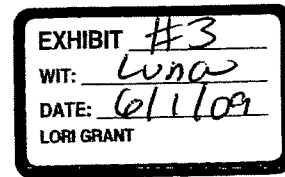
Amy Luna
PIP Unit Manager
The Hanover Group
aluna@hanover.com
808 N Highlander Way
Howell, MI 48844
1-800-628-0250 extension 4928
FAX 508-635-0888

*New file
for sub*

Date:

Re: Medical Mileage

To: Whom It May Concern:

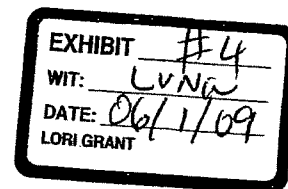


The Michigan No-Fault Statute provides that you are to be reimbursed for eligible medical mileage. Effective January 01, 2007, utilizing the 2007 guidelines for determining rate of medical mileage, Citizens Insurance Company will reimburse medical mileage at \$0.20 per mile.

If you have additional information to support a greater cost associated with your medical mileage, please submit proofs for further consideration.

Sincerely,

From: YVONNE L. ROGERS [YROGERS@HANOVER.COM]
Sent: Tuesday, May 29, 2007 1:23 PM
To: PATRICIA KAREN MALONE
Subject: Re: Medical Mileage



Ok ... I just utilized the verbiage you suggested in our conference call. I will role it out to the staff.

Yvonne Rogers
PIP Claim Manager
517-540-3213
YRogers@Hanover.com

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>>> PATRICIA KAREN MALONE 05/29/07 9:27 AM >>>

How does this look. I removed "greater costs" and left it more generic...

Karen Malone
Ph: 508-855-7914
Cell: 508-450-2862
Fax: 508-856-9370

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>>> YVONNE L. ROGERS 05/25/07 11:59 AM >>>

Karen, attached is a draft of the medical mileage letter with the language we discussed in our telephone conference. Once you approve, I will share with Teri and Lee.

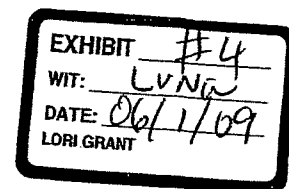
Yvonne Rogers
PIP Claim Manager
517-540-3213
YRogers@Hanover.com

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this e-mail in error, please notify me via return e-mail and permanently delete the original and destroy all copies.

EXHIBIT	#5
WIT:	Lyna
DATE:	6/1/09
LORI GRANT	

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Sent: Tuesday, May 29, 2007 1:23 PM
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Subject: Re: Medical Mileage



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YROgers@Hanover.com

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EXHIBIT	#5
WIT:	Lyna
DATE:	6/1/09
LORI GRANT	